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Published by
SWEET & MAXWELL, LTD., 2 & 3 Chancery Lane, London, W.C.2

PRINTED IN GREAT BRITAIN
BY
THE EASTERN PRESS LTD.
LONDON AND READING

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THE JOURNAL of PLANNING LAW

Published by
SWEET & MAXWELL, LIMITED
2 & 3 CHANCERY LANE, W.C.2

On the First of Every Month
Subscription: £1 10s. 0d.

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"Planning Law" Notes

In a recent speech opening the conference of the Town and Country Planning Association, the Parliamentary Secretary to the Ministry of Town and Country Planning (Mr. Lindgren) expressed the view that the real testing time of planning is coming in 1951 when the development plans of the local planning authorities are due to be submitted to the Minister.

It is reported in the press that the Minister's approval has been given to the development plan for the Tynemouth County Borough Council, the first local authority to submit a plan for the whole of its area.[1] We report in some detail in this issue (p. 30, *post*) the public local inquiry held at West Hartlepool into the development plan proposals for that town.

The effect of the Development Charge Exemptions Regulations in certain cases is to increase the market value of land, although on a compulsory purchase under the Town and Country Planning Act, 1947, the Regulations would not be taken into consideration in assessing the compensation.

The Ministry of Health has informed the Local Government Associations that in such cases, where the local authority wish to pay the higher price in order to buy by agreement, approval will be given for loan or grant purposes by the Government department concerned.

The Minister of Health has issued Circular 109/50 dated December 7, 1950, stating that it is not proposed to seek an extension of the period during which authorisations may be given under s. 2 of the Acquisition of Land (Authorisation Procedure) Act, 1946. Accordingly this power to authorise the speedy acquisition of land will lapse on April 17, 1951. Applications under s. 2 should therefore not be made to the confirming authority unless enough time remains at the date of submission for the confirming authority, if it so decides, to give an authorisation before July 18, 1951. It is suggested in the Circular that local authorities would normally do well to regard January 31, 1951, as the date after which application could not usefully be made.

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[1] See [1950] J. P. L. 561.

A supplement to the Central Land Board's "PRACTICE NOTES (First Series)" has now been issued dealing with the calculation of development charge in respect of Minerals. See p. 48, *post.*

The Royal Institution of Chartered Surveyors have now issued a shortened version of their Memorandum on the Act of 1947, which was reprinted in full at [1950] J. P. L. 528, 619, 715.

Further recommendations for a radical alteration of the statutory provisions relating to development charges and the £300 million fund for loss of development value have been announced by two more bodies.

The Federation of British Industries have issued a statement on problems affecting industry. The federation recommends, *inter alia*, that "development value certificates" should be issued to landowners for the amount of development value of their land as at the passing of the Act. On development of the land, development charge would be assessed and set off against the value so certified. Development charge would become payable when the certified development value had been used up. The federation recommends that development charges should in any case be levied at a figure less than 100 per cent. of development value.

The Association of British Chambers of Commerce, in a memorandum to the Minister of Town and Country Planning and the Chancellor of the Exchequer, make even more drastic recommendations. They consider that development rights and values should be restored to landowners, the £300 million fund cancelled, and development charges already paid should be repaid.

The Ministry of Town and Country Planning have issued an imperative call to local authorities to save every acre of productive agricultural land by ensuring that it is not taken for development when less good land would serve the purpose (Ministry Circular No. 99). It is pointed out that planning and development are not the same thing, although they are often popularly confused. Planning authorities at present preparing development plans are being supplied with information about the relative values of agricultural land in their areas by the Provincial Land Commissioners of the Ministry of Agriculture. When development plans come before the Minister of Town and Country Planning for his approval, he will need to be satisfied that this information has been properly taken into account.

Closer co-operation between Government departments proposing to develop land and the local authorities concerned is to be instituted. Details of a new procedure to be adopted are contained in Circular No. 100 issued by the Ministry of Town and Country Planning. Departments will in future communicate details of their proposals directly to the local authorities who will normally be expected to comment on the proposals within two months. If there are substantial objections from the local authority which the developing department does not wish to meet, consultation will take place with the Ministry of Town and Country Planning. Special arrangements are provided for secret proposals and for proposals of particular urgency.

Reference has been made previously in this Journal (see [1949] J. P. L. 599) to the question whether enforcement action may be taken in respect of "existing contravening development" under s. 23 as applied by s. 75 of the Act of 1947, notwithstanding that the period of four years from the carrying out of the development specified in s. 23 has elapsed (provided that the three-year period in s. 75 has not). This question has now been considered and decided by a Divisional Court of the King's Bench Division. See p. 58,

Attention is drawn to the fact that January 31, 1951, is the last day for claims under s. 59 of the Act of 1947, for loss of development value in respect of war-damaged property where a value payment has been made. See p. 47, *post*.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Journal. They should be sent to the Managing Editor, *Journal of Planning Law*, 3 Chancery Lane, London, W.C.2. *Every attempt will be made to return drafts or unsuitable copy but no guarantee can be given in this respect. Books for review should be sent to the Publishers at the above address.*

Planning and 1951

By Desmond Heap, LL.M., L.M.T.P.I.

Comptroller and Solicitor to the Corporation of the City of London

Ever since the Town and Country Planning Act, 1947, came into operation two-and-a-half years ago it has been the subject of criticism. The more its effect has been realised the more it has been criticised, for not everybody likes town and country planning. Indeed the amount of criticism which the 1947 Act has provoked is not really surprising when the revolutionary nature and far-reaching effect of the enactment are appreciated. A lot of the criticism has been ill-considered and much of it ill-informed. There has been a very great deal of argument which (briefly) has been to the effect that the *planning provisions* of the Act were welcomed but that the *financial provisions* relating to claims on the £300 million fund and to development charges (*i.e.*, the compensation—betterment provisions) were not acceptable at any price. This kind of argument does not get one anywhere at all. It is customary to distinguish between the planning provisions proper of the Act and the compensation-betterment provisions (as the writer has done on more than one occasion), and there is nothing wrong in this provided it is clearly understood that whilst it may be convenient to distinguish these respective sets of provisions they can never be completely divorced from each other (the one set being accepted and the other set rejected) because there is a strong and indeed rather tiresome and assertive link between the two which simply will not be gainsaid. If one casts an eye over the war-devastated regions or the acres of obsolete development to be found in this island (*i.e.*, over our regretted areas of blitz and blight) and then transfers the gaze to the blueprints of processional ways, avenues, community centres, block developments and open spaces by which it is planned to replace them, can there be any doubt that such a transformation is capable of achievement without it costing somebody something (and a not very clever guess is that this will be the taxpayer) or without it hurting somebody somewhere (and an equally ordinary guess is that this will be the landowner). It is no use accepting the planning provisions of the 1947 Act whilst at the same time rejecting their financial implications. Whether the *cost* of an over-rigorous use of these planning provisions is one which can be afforded to-day is quite another matter. Planning is bound to cost something *now* however much it may pay for itself in a hundred years' time (when the new 99 year leases run out) and this matter of cost is referred to again in the concluding paragraphs of this article.

Distinct from the fund of less responsible criticism mentioned above, a great deal of constructive and thoughtful criticism of the 1947 Act has been made public during 1950 after much discussion and argument. This criticism has been made by experts and in the light of experience gained during the first two years of the Act's operation. Throughout the year there have been published Memoranda setting forth the considered views of the Royal Institution of Chartered Surveyors (in May),[1] the Law Society (in August),[2] the Federation of British Industries (in August), the Chartered Auctioneers' and Estate Agents' Institute (in September) [3] and the Association of British Chambers of Commerce (in November). All these Memoranda are available from their respective compilers and much of their content has already been the subject of articles and comment in this *Journal*. No useful purpose would be served by repeating in any detail the points made by these various professsional bodies and it is not the purpose of this article to do so. By way of general comment it may, however, be stated that whilst some criticisms of the Act are exclusive to certain of these Memoranda, others find almost unanimous expression in all the Memoranda. But without doubt the overwhelming conclusion to be drawn from these publications is that when no less than five bodies possessing the standing of those mentioned, having given close attention to the 1947 Act, then see fit to express genuine concern (to avoid the language of exaggeration) about the Act and the manner in which it is functioning, *this* is something which ought to provide food for thought.

Some points of detail relating to the legal effect of certain sections of the 1947 Act (*e.g.*, s. 12 (2) (*a*) and s. 23, both of which are dealt with in the Town and Country Planning Bill, 1950, published on December 12, 1950), and relating to the administration generally of the Act (with special reference to the vexed question of the delegation of powers relating to the day-to-day control of development from local planning authorities to local authorities) are made in the Memoranda issued by the professional bodies mentioned, but it is beyond argument that the real heat of their considered criticism plays most determinedly upon the compensation-betterment provisions of the 1947 Act, *i.e.*, upon Part VI (relating to the £300 million fund and the expropriation of development rights in land), and Part VII (relating to development charges). Parts VI and VII of the Act are the ones which in the unanimous view of all the Memoranda are now most urgently in need of reconsideration. In view of this, as also of the fact that it was by these two Parts that the 1947 Act sought to cure once and for all the "bugbear of compensation" (so called by local authorities and claimed by them to be the ruination of all planning), it is proposed in the remaining paragraphs of this article to offer (even at the risk of some repetition) a few observations on the compensation-betterment problem of town and country planning and some criticism of what the 1947 Act has done about it.

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[1] [1950] J. P. L. 528, 619, 715.
[2] [1950] J. P. L. 899.
[3] [1950] J. P. L. 848.

Floating value under the 1932 *Act.*

Under previous planning law local planning authorities were under a liability to pay compensation for injurious affection sustained by any person as a result of provisions contained in, or action taken by a local authority under, an operative planning scheme made under the Town and Country Planning Act, 1932, or earlier planning enactments. In fact few such schemes ever came into force (about 4 per cent. only of the land in England and Wales was subject to operative planning schemes when the 1932 Act and the schemes themselves were all repealed on the coming into force of the 1947 Act on July 1, 1948), but local planning authorities in deciding, during the period of interim development which elapsed before operative planning schemes came into force, whether or not to grant planning permission for development, were often moved by fear of their ultimate liability to pay compensation if, during the interim period, they refused planning permission for development. In short, planning considerations were often subjugated to financial considerations.

According to the Uthwatt Final Report (Cmd. 6386) the amount of compensation payable was inflated by the factor of "floating value" analysed in paragraphs 23 and 24 of the Report. This matter of "floating value" is attacked in the Memoranda of the professional bodies mentioned above who suggest that its effect has been greatly exaggerated in the Uthwatt Report, paragraph 24 of which, when speaking of the potential development value of land, says :—

> "Potential value is necessarily a 'floating value', and it is imposible to predict with certainty where the 'float' will settle as sites are actually required for purposes of development. When a piece of undeveloped land is compulsorily acquired, or development on it is prohibited, the owner receives compensation for the loss of the value of a probability of the floating demand settling upon his piece of land. The probability is not capable of arithmetical quantification. In practice where this process is repeated indefinitely over a large area the sum of the probabilities as estimated greatly exceeds the actual possibilities, because the 'float', limited as it is to actually occurring demands, can only settle on a proportion of the whole area. There is therefore overvaluation".

Nationalisation of development value under the 1947 *Act.*

The 1947 Act has sought to solve the local planning authorities' "bugbear of compensation" by nationalising the development value in land. Thus the landowner has lost all the development rights in his land. If the landowner sells his land he can sell only the existing use rights in the land, that is to say, the rights under which the purchaser will be able to continue to use the land for its existing purpose but not to develop it for any other purpose. The purchaser having purchased the land will then have to purchase from the State the development rights in his newly acquired land, and this he will do by paying to the Central Land Board a development charge.

It is in this effort to solve by way of the 100 per cent. development charge the compensation problem which in the past has so alarmed planning authorities that the 1947 Act has, quite frankly, failed to take sufficient note of the workings (or misworkings) of human nature. Ordinary people, it must be admitted, are not addicted to doing something for nothing.

The 100 *per cent. development charge.*

When the 1947 Act was debated in Parliament it was stated that a free hand in the levying of development charges should be allowed to the Central Land Board, so that 80, 90 or 100 per cent. might be levied in case of development if carried out in one place but only 40, 50 or 60 per cent. charged if the same development was carried out in another place. The Lord Chancellor said in the House of Lords on June 5, 1947 (House of Lords, Official Report, Vol. 148, col. 273) :—

> "First of all, instead of saying that the landowner was to have to pay only 80 per cent. so that he shall have some inducement in development, we have this idea of the Central Land Board, which gives very much greater elasticity; instead of a rigid 80 per cent. in each case you get more elasticity, which I think is good".

However, when the Town and Country Planning (Development Charge) Regulations, 1948, were published, instead of a rigid 80 per cent., which Parliament had rejected on the ground that it was inelastic, it was found that there had been substituted a rigid 100 per cent. with no elasticity at all. The Central Land Board were given no discretion with the result that there was no possibility of a 20 per cent. "inducement" (to use the Lord Chancellor's pregnant expression) or, indeed, of any other greater or less "inducement in development", being left with a person who was seeking to carry out development.

According to the Memoranda of the professional bodies mentioned above, the 100 per cent. development charge destroys the landowner's incentive either to develop his land himself or to sell his land for the purpose of allowing someone else to develop it. Nor is this very surprising as is shown in the next paragraphs.

If the landowner already owned his land on July 1, 1948, he may be expected to think twice before he incurs the liability of a 100 per cent. development charge against which all he can set off is his problematical claim on the £300 million fund, he himself (be it remembered) having bought the land before July 1, 1948, at its full market value and, moreover, in order to enable him to do so, having perhaps raised a mortgage upon it of substantial proportions. In considering the position of such a man it should be remembered that if he did buy land at some date before

July 1, 1948, and paid for it a full market value, as "good building land ripe for immediate development" (that is to say, a value which includes not only the existing use value of the land but also its development value as good building land), and if in addition to purchasing the land at the full market value he also raised on the land a mortgage of an amount considerably in excess of the existing use value of the land,—it is only fair to remember in such a case that in doing all these things that man (and it may be added, the mortgagee who lent the money) was only doing what the law allowed. There was nothing illegal in what was done. He was merely conforming to the established custom that sales and purchases of land should take place on the basis of the full value of the land in the open market at the date of the transaction. On such a basis sales and purchases of land have been taxed by the State for generations.

It is appreciated that it may be argued that such a man having bought his land at full market value in accordance with custom and the law, did not thereby acquire the right to develop the land as he pleased. The Uthwatt Final Report (Cmd. 6386) made reference (in paragraphs 32, 33, 34, 35 and 36) to the fact that an owner of land is not entitled by reason of his ownership to develop his land as he pleases, and to the further fact that where the State limits the use which an owner may make of his property, *but does not deprive him of ownership*, no claim for compensation lies at common law. In *France, Fenwick & Co., Ltd.* v. *R.*, [1927] 1 K. B. 458, Wright, J., stated (at p. 467) :—

> "I shall assume that the Crown has no right at common law to take a subject's property for reasons of State without paying compensation. I think, however, that the rule can only apply (if it does apply) to a case where property is actually taken possession of, or used by, the Government, or where, by the order of a competent authority, it is placed at the disposal of the Government. A mere negative prohibition, though it involves interference with an owner's enjoyment of property, does not, I think, merely because it is obeyed, carry with it at common law any right to compensation. A subject cannot at common law claim compensation merely because he obeys a lawful order of the State".

The Uthwatt Final Report, however, went on (in paragraph 32) to add that cases exist where this common law principle is modified by statute and provision is made for payment of compensation.

But be this as it may, it is certainly notorious that before the Act all land suitable for development always changed hands at prices considerably in excess of existing use value and thousands of people who bought land certainly bought it with the idea that their ownership gave them the right to change its use subject to byelaws and planning control *but without the need of having to pay a further sum to acquire the right to change its use.*

Again, if a man owned land on July 1, 1948, and because he does not wish to face what is going to be a 100 per cent. development charge if he develops it himself, contemplates selling the land, he may find that the prospective purchaser does not now want to pay more than the existing use value of the land because he, the prospective purchaser, knows that when he comes to develop the land he will have to pay a 100 per cent. development charge. Such a landowner will again find that all he has to set off against the loss which he makes if he sells his land at existing use value is his problematical claim on the £300 million Fund. Accordingly he has no incentive to sell his land.

In strict theory the imposition of the 100 per cent. development charge is, of course, the logical outcome of the vesting in the State of the whole (*i.e.*, 100 per cent.) of the development rights in land but here is another case in which practice and theory are two very different things owing largely to the fact that the provisions of the Act are logical whilst human nature is not. Moreover, so far as any enactment relating to town and country planning is concerned, the important thing to remember is that if the principle of the 100 per cent. development charge is for one reason or another, a principle which tends to discourage development, then it is something which requires serious review whether or not it is a principle which neatly conforms with the requirements of a theory which looks well on paper but breaks down in practice.

It is true that much development for which planning permission has been granted and development charges assessed, is being held up because owing to the exigencies of the times, an appropriate building licence cannot be obtained. It is, however, doubtful if lack of building licences and lack of materials is the complete answer to the suggestion that the

100 per cent. development charge tends to discourage development and the acceptance by those undertaking development of the risks and hazards (not to be under-estimated in days, as now, of economic stress) which are the natural accompaniment of development operations. The buying and selling of land is often a pre-requisite of the carrying out of development and the Central Land Board themselves in their First Annual Report for the period ending March 31, 1949, stated that " Much building land has been taken off the market or is available only to purchasers who will pay the full development value ", and that " the Board will continue to watch the position closely ". In their Second Annual Report for the financial year 1949–50 the Board again reiterate that " one of the principles underlying the Town and Country Planning Acts is that land should be sold for development at existing use value " but that " The evidence available to the Board of prices paid for land for development suggests that the sales at or near existing use value are more the exception than the rule ".

The sterilising effect of the lack of any incentive to sell land is also shown by the fact that since the autumn of 1948 the Central Land Board has received about 1,200 applications for help in obtaining land at the existing use value. However, out of this number the Board have felt it appropriate to act only in 15 cases. This seems a small number indeed but the truth of the matter is, of course, that no amount of compulsory purchase by the Central Land Board or local authorities can adequately compensate for the loss of incentives, enthusiasm or interest on the part of private individuals. If planning can be made to work only under the persistent goad of compulsorily purchase it will most emphatically lose the goodwill of the individual citizen without which it cannot expect, in the ultimate analysis, to succeed at all.

In short, those who seek to operate the sanction of compulsory purchase whether by the Central Land Board or by local authorities in order to *make* people sell land to one another freely as they did before the 1947 Act became law, are resorting to a dangerous (and, it is submitted, an unintended) use of the powers of the 1947 Act which in the end may do more harm than good. Rather than have such an outburst of compulsory purchase orders and the attendant alienation of public sympathy it would be better to examine more closely the provisions of the 1947 Act which are destroying the incentives which heretofore have encouraged men to undertake development themselves and thereby incur the risks inseparably associated with all schemes of development or to sell their land so that others might shoulder the responsibility of developing it. It will be found that it is the development charge provisions of the 1947 Act which are responsible for this and the conclusion cannot be avoided that (human nature being what it is) some amendment of these provisions so as to restore the incentives they have destroyed will be required.

The exercise of planning powers.

At this time, being two and a half years since the 1947 Act came into operation and being the opening of a new year, it will perhaps not be inappropriate to conclude with a few remarks on the exercise of planning powers whether under the 1947 Act as it stands or under any amendment of the Act which 1951 (or some later year) may bring forth.

As has been stated elsewhere the planning provisions of the 1947 Act and *the use* which is made of them are different matters and it now appears that the cost of using them is (the times being what they are) very much to be borne in mind. The more modest the blueprints the more workable they will be. In short, the economic side of planning is beginning to rear its ugly head, or so it would appear, and the special correspondent of the *Times*, writing in the *Times* newspaper for November 24, 1950, in connection with reconstruction under the 1947 Act in the City of Hull, made the pertinent observation that the vision of a changed city had been adjudged unattainable and that "Instead Hull is beginning to rebuild very much to the existing pattern, with adjustments here and there". This kind of thing has occurred before and there are many who will think at once of the oft-quoted Wren plan for the City of London after the Great Fire *and of what happened to it.* The economics of reconstruction are, apparently, as omnipotent in the twentieth as they were in the seventeenth century and history seems to be repeating itself.

The concept of town and country planning is broad and wide but the "limits of the plannable" are not in practice to be ignored. The Report of the Committee on Qualifications of Planners (Cmd. 8059)—the Schuster Committee—has some chastening observations on this point when it says (para. 64)

"We have shown how far-reaching the conception of town and country planning has become and how wide are the powers available to planning authorities; but what they can actually achieve will be subject to severe practical limitations. The existence of these limitations does not, however, mean our conception of the scope of planning is invalid. What it does mean is that it will not work in practice unless the planning authorities take account of them. In fact the limitations serve to increase the responsibility of the authorities in relation to the determination of policies". In para. 65 the Report states, "Cost in fact must dominate positive planning, since there is no end to the improvements in environment which are ideally desirable. It is cost that sets the limit and when cost is ignored—as indeed appears to have been the case in some of the contemporary planning proposals—then planning is just so much waste paper". These are sobering words but nevertheless wise ones and if the writer may be permitted to conclude with his own remarks (of April, 1950) he would venture again to submit that "as between planning and development the scales are overweighted at the moment in favour of planning. What is required is the striking of a more statesmanlike balance between the idealistic needs of land-planning and the realistic requirements of land-development. Planning on paper is one thing; getting development going on a given site is another".

What is a Curtilage?

By Ronald P. Crompton, M.A.(Oxon), L.A.M.T.P.I.

Deputy Town Clerk of the Borough of Middleton

Development within the curtilage has already received recognition in these pages ([1949] J. P. L. 285) and its importance in planning law cannot be over-emphasised. An increasing proportion of houses possess garages and although in these days the coach house and loose box may be disappearing even they are retained—with reference to the curtilage—for the purposes of the regulations governing permitted development and development charge exemption. In the larger estates the stable block may be in process of being converted into flats and special problems are arising dependent on an interpretation of the word curtilage.

"Curtilage" is an expression well known to the law. It is used in relation to burglary and housebreaking; it finds its greatest recognition in the drainage problems arising under the Public Health Act, 1875, and the Metropolis Management Act, 1855. East once defined land within the curtilage as being "land within the same common fence". A line of cases has decided that the curtilage may include the following:

(a) shrubbery and orchards—*Hewson* v. *London and South Western Rail Co.* (1860), 2 L. T. 369.

(b) paddock behind a house accessible only from the garden—*Barnes* v. *Southsea Rail Co.* (1884), 27 Ch. D. 536.

(c) courtyard to a house—*Caledonian Rail Co.* v. *Turcan*, [1898] A. C. 256.

It does not include:

(a) fields used for grazing—*Pulling* v. *London, Chatham and Dover Rail Co.* (1864), 33 L. J. (Ch.) 505.

(b) gardens and stables on opposite side of the road purchased subsequently to the house—*Kerford* v. *Seacombe, Hoylake and Deeside Rail Co.* (1888), 57 L. J. (Ch.) 270.

(c) a private road leading to a mansion—*Allhusen* v. *Ealing and South Harrow Rail Co.* (1898), 78 L. T. 285, 396, C. A.

In Termes de la Ley it is defined as "a garden, yard, field, or peece of voide ground, lying neare and belonging to the messuage". The conveyancers have conscientiously avoided any legal issues by adequately describing the boundaries of a dwelling-house in the parcels and by plan and not relying on the fact that a dwelling-house includes land within the curtilage. One rent control case—*Scott* v. *Austin* (1919), 122 L. T. 235, was decided under the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, but the legislature evidently saw the danger and did not in future rely on an interpretation of curtilage. See further as to this case, below.

Most of the other decided cases are under the Public Health Act, 1875, and the Metropolis Management Act, 1855, and they are very confusing.

The most important issues from the point of view of planning seem to be (1) the extent of the curtilage, and (2) the effect of the division or alteration of the main dwelling-house.

1. The Extent of the Curtilage

Is a curtilage an artificial barrier, a mere surveying term or is it capable of accurate legal definition? Suppose "A" has a house which is surrounded by a garden wall. He buys further land outside the garden wall from "B" and immediately knocks down the wall and re-erects it to include the new land. Does he thereby increase his curtilage as to all intents and purposes the land is within the same boundary or as East says "the same fences", or does the fact that the two ownerships were acquired separately affect the issue? The decided cases previously quoted are of course dependent on the particular circumstances and it is quite easy to see how a field used for grazing might be considered to be within the curtilage. It appears from *Scott* v. *Austin* (*supra*) that the adequacy of the garden plot for the particular dwelling does not affect the issue. In that case land which was the prospective site of future cottages was held to be part of an existing cottage. Without attempting to be the least dogmatic one can say that land within an artificial or natural boundary which a casual observer would say from appearances formed a natural part of the house is properly described as the curtilage.

In the Court of Session, in *Sinclair-Lockhart's Trustees* v. *Central Land Board* (1950), 1. P. & C. R. 195 at p. 204, Lord Mackintosh cited *Caledonian Railway* v. *Turcan*, [1898] A. C. 256, and said "This rather illuminating decision seems to show that ground which is used for the comfortable enjoyment of a house or other building may be regarded in law as being within the curtilage of that house or building and thereby as an integral part of the same, although it has not been marked off or inclosed in any way. It is enough that it serves the purposes of the house or building in some necessary or reasonably useful way".

2. The Effect of the Division or Alteration of the Main Dwelling-house

Where a dwelling-house is converted into flats, how does this affect development within the curtilage? Under the Town and Country Planning General Development Order and Development Charge Applications Regulations, 1950, a "'dwelling-house' does not include a building containing one or more flats as defined by the Housing Act, 1936". From this it appears that each flat is a separate dwelling-house and presumably if it has a curtilage should have a curtilage separate and distinct from each other flat. It is possible to envisage the occupier of a ground floor flat having exclusive use of a garden, by arrangement with other owners, it is more difficult to connect the fifth floor occupant with a curtilage. Unfortunately the one decided case under the Metropolis Management Act, 1855, *Pilbrow* v. *St. Leonard, Shoreditch, Vestry*, [1895] 1 Q. B. 433, raises some difficulty. Two blocks of buildings let out in a number of separate tenements and standing in an enclosed yard but in the same ownership were held to have the same curtilage. Rigby, L.J., dissented on the grounds that there cannot be one curtilage to two or more messuages and this seems the more natural view. If two blocks of buildings can have the same curtilage, then presumably a dozen flats can have the one curtilage. And what is the position if the ownership of the blocks or of the flats is subsequently split?

The importance of this issue can be seen when facts are given which have arisen in practice. A country house is in existence at the appointed day with stables and garages on a rather large scale within the curtilage. In accordance with Practice Note 18, these outbuildings can be converted into residential accommodation without payment of development charge. The country house itself is subsequently turned into flats and it is then desired to convert the outbuildings into dwelling accommodation. If they are deemed to be still within the curtilage (as *per Pilbrow* v. *St. Leonard, Shoreditch, Vestry*, *supra*) the change can be effected. If they are no longer within the curtilage, assuming the former case to be overruled or some distinction made between flats and separate buildings, an interesting position arises. Buildings within the curtilage are in an unusual position. Their dependency is stressed by s. 12 (2) (*d*) " the use of any buildings or other land within the curtilage of a dwelling-house for any purposes incidental to the enjoyment of the dwelling-house as such " and s. 112 " to be used in connection with the original building " but there is no " dominant and servient tenement " in planning law and the General Development Order, 1950, does not make them dependent on the principal dwelling-house. If a slight amendment is made to the facts which have been given, the position will be clarified. Assuming the outbuildings were newly erected, before the conversion of the main house into flats but after the appointed day, they would of course be erected as permitted development under the 1950 Order, provided they came within the prescribed limits. If the main house was then converted into flats would the outbuildings become unauthorised dwellings subject to enforcement procedure? It is suggested that they would continue to exist in their own right and having been endowed by a generous Central Land Board with the right to be turned into dwelling accommodation without payment of development charge their owners could continue to exercise this right. It is also suggested that if the ownership of the main house and the outbuildings became split this would not affect the issue.

It is interesting to note in passing the provisions of s. 112 and Practice Note 20. S. 112 provides for the aggregation of two or more buildings within the same curtilage as one unit for the purposes of any institutions or undertaking.

Practice Note 20 excepts a dwelling-house which is not an institution or undertaking and has separate rights under the Third Schedule and Exemptions Regulations. In the Third Schedule reference is made to the enlargement of a building or dwelling-house—in the singular. S. 112 perhaps suggests that a factory comprising more than one building may have a single curtilage which perhaps leads back to the heading of this article.

Two further points relating to the curtilage which arose under the Act of 1947 may be mentioned. In *Sampson's Executors* v. *Nottinghamshire County Council* (1950) 1 P. & C. R. 1, at p. 8, Goddard, L.C.J., said, *obiter*, that the bringing of agricultural land within the curtilage of a dwelling-house is a material change of use. In *Sinclair Lockhart's Trustees* v. *Central Land Board* (1950), 1 P. & C. R. 195, the Court upheld the contention of the Central Land Board that in assessing development charge the Board were entitled to take into consideration what would be the curtilage of the farmhouse which was the subject-matter of the application although the application had been in respect of the site of the building only.

Compulsory Purchase for the Private Practitioner—I

By J. F. GARNER, LL.M., Solicitor

In this short series of articles we are proposing to review the procedure for the compulsory acquisition of land from the point of view of the private practitioner required to act for a client whose land becomes the subject of a compulsory purchase order. The procedure will be followed through in some detail, and it is proposed also to deal with some of the more difficult points that may arise in practice, and to suggest courses of action which it may be possible to take in order to prevent the acquisition. No private individual relishes the compulsory acquisition of his land, and he is, it is submitted, fully justified if he can, within the framework of the law, circumvent the acquisitive intentions of a local or other public authority, however much these may be in the public interest.

It is proposed in the first place to discuss only normal cases of acquisition by a local authority. Special cases providing for expedited completion, acquisitions by Government Departments, etc., will be dealt with later.

In all such normal cases of compulsory acquisition, the following general procedural statutes are applicable :

(a) The Acquisition of Land (Authorisation Procedure) Act, 1946, regulating the procedure whereby the acquiring authority obtains an operative compulsory purchase order ;

(b) The Lands Clauses Consolidation Act, 1845, regulating the procedure whereby the acquiring authority, on the authority of the operative compulsory purchase order, is enabled to obtain the legal estate in the land acquired ; and

(c) The Acquisition of Land (Assessment of Compensation) Act, 1919, as modified by Part V of the Town and Country Planning Act, 1947, and the Lands Tribunal Act, 1949, regulating the principles and methods by which the compensation the acquiring authority is to pay must be assessed.

(A) *Before the order.*

Before the passing of the Town and Country Planning Act, 1947, it was customary for any local authority desiring to acquire a parcel of land, first to approach the owner and enquire whether he would be prepared voluntarily to sell them the land, thereby giving the owner some chance to bargain for an economic price for his land. Since the passing of the Act, however, local authorities have been advised by the Minister of Health not to agree to pay more than the "existing use value" for any land, and that Governmental loan sanction will not be forthcoming for the purchase on any other basis. There is now, therefore, very little point in free negotiation, and in some cases the owner has no advance knowledge of the desire of the authority to acquire his land before he is served with notice of the making of a compulsory purchase order.

However, in many cases the owner will get "wind" of the authority's intentions before the order is actually made, and it is suggested that the legal adviser of an unwilling seller should start work immediately. Protests can be sent to the clerk to the authority, letters written to the press, and other official interests (such as the local agricultural executive committee, where agricultural land is proposed to be acquired [1]) can be called in aid, and the project may, as a result, be stillborn. If, in spite of such protests, the order is nevertheless made, this preliminary work may still come in very useful at the inquiry (see para. (D) below).

(B) *The making of the order.*

The first official notification that the owner of the land proposed to be acquired will receive is a copy of a notice in Form 3 scheduled to the Compulsory Purchase of Land Regulations, 1949 (SI 1949, No. 507, hereinafter referred to as "the Regulations"), advising him that the compulsory purchase order has been made; at the same time, the acquiring authority are required to publish a similar notice in two successive weeks in a local newspaper (see Form 2 scheduled to the Regulations, and para. 3 of the First Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946, hereinafter called "the 1946 Act"). This notice must be served in manner provided by para. 19 of the First Schedule to the 1946 Act, on every owner (see definition in s. 8 (1) of the 1946 Act), lessee and occupier, except tenants for a month or any period less than a month, of any land comprised in the order. These procedural points are mentioned here, as it is desirable that the owner's adviser should check at once that the Act has been complied with, for any irregularity may enable proceedings to be taken subsequently to quash the order (see para. (E) below).

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[1] See M. T. C. P. Circular No. 99, on the preservation of agricultural land.

Any owner served with such a notice, and wishing to object thereto, must make his objections in writing, sending them to the appropriate confirming Government Department (the name and address of this Department will be given in the notice served on the owner). This notice of objection need not take any particular form, but it should state the name of the compulsory purchase order to which objection is being made, the parcel of land to which the objection relates, and the interest of the objector in that land. The grounds of objection must also be stated, as required in the notice.

(C) *The grounds of objection.*

It is most important that the grounds of objection should be carefully drafted, as the objector will be confined thereto when making out his case at the local inquiry; on the other hand, a copy of the objection will be forwarded by the Government Department concerned to the acquiring authority, and it is important therefore, that not too many details of the objector's case should be disclosed. Objections based on the inadequacy of the compensation which the owner expects to obtain, or matters " which can be dealt with by the tribunal by whom the compensation is to be assessed ", should not be included, as the confirming authority is entitled to ignore these (see para. 4 (4) of the First Schedule to the 1946 Act). Similarly, if an objection amounts in substance to an objection to the provisions of the development plan defining the proposed use of the land comprised in the order or in any other land, the confirming authority is entitled to ignore it. Legal authority for such action in this case is to be found in s. 45 of the Town and Country Planning Act, 1947, and as the owner would have had an opportunity to object to the proposed provisions of the development plan, it is unlikely that he would have been " substantially prejudiced " (see below, para. (E)) by the failure of the confirming authority to consider his objection.

Planning grounds will normally be the most substantial arguments to use; *e.g.*, that the owner had recently obtained planning permission for particular development which was consonant with the provisions of the development plan for the area, that the proposed use by the acquiring authority was not in accordance with the provisions of the development plan, or was not good planning for the area, etc. Legal grounds may be in point, if, for instance, it can be established that the acquiring authority have no powers to acquire the land compulsorily for the purposes intended (this argument cannot often be used, and it may sometimes merely mean that the authority start again, using other powers). It may also be possible to argue that the acquisition is unnecessary, is opposed by local residents, or is opposed to the best interests of the locality. If the land to be acquired is agricultural, it may be possible to obtain the support of the local agricultural executive committee.

An objection having been made, the confirming authority is obliged to consider it (except in the two cases mentioned), and must either cause a public local inquiry to be held, or hold an informal inquiry before a person appointed by him for that purpose. In practice, informal hearings are rare, and it it not proposed to consider them further in this article.

(D) *Public local inquiries.*

Care should be taken in preparing the objector's case for a local inquiry, particularly in deciding on the nature of the evidence to be called. If counsel is to be briefed his advice on evidence should be obtained at an early stage. In particular, the possibility of calling local residents in support of the objections should be thoroughly explored; the acquiring authority will normally call an elected representative to justify the acquisition as a matter of policy, and determined local opposition alone can effectively answer such evidence. At least one expert witness should be called, if possible, to counter the technical witnesses that the acquiring authority will undoubtedly call; but care should be taken to ensure that the "expert" has the qualifications appropriate to the evidence he is required to give. Power is given to the Inspector conducting the inquiry to summon any person to attend and give evidence (Act of 1946, s. 5 (2), incorporating s. 290 (2) and (3) of the Local Government Act, 1933), but this is very rarely used.

At the inquiry itself, the case is normally opened by the acquiring authority. Their advocate outlines the authority's case in support of the order, and then calls his evidence; the objector (or each objector in turn, if there are more than one) is given an opportunity to cross-examine the witnesses, and the authority is allowed to re-examine. The objector's advocate then opens his case, and his witnesses are examined, cross-examined and re-examined. The acquiring authority are then allowed to address the Inspector, and the hearing concludes with an inspection of the site by the Inspector, in the presence of all parties. It should be noted that the above is the normal procedure; there is in law no necessity for this procedure to be observed, and in practice most Inspectors allow a certain amount of latitude in the application of the strict rules of evidence (*e.g.*, leading questions are commonly permitted in examination-in-chief to a greater extent than in the courts). It is only if the objector can show that he has not been permitted properly to present his case that he would be able legally to complain (see para. (E) below).

(E) *Confirmation of the order.*

The Inspector conducting the inquiry does not announce any result at the end of the hearing, but reports thereon to the Minister or other confirming authority. The confirming authority must then consider the Inspector's report, and may either quash the order, or confirm it, with or without modification. If the order is confirmed, the acquiring authority will be notified to that effect, and they must " as soon as may be ", publish a notice of such confirmation in a local newspaper, and serve a copy of the notice on all the owners, etc., of the land concerned; this notice must be in the prescribed form (Form 5 scheduled to the Regulations).

Consideration should then be given by the objector's adviser to the question whether the validity of the order can be challenged in the Courts. Proceedings may be taken by any person aggrieved by an order, by making application to the High Court under R. S. C. Order 55B, within six weeks of the date when notice of the confirmation of the order was first published. The court may make an interim order suspending the operation of the compulsory purchase order pending the final determination of the proceedings, and on such final determination may quash the order, either generally or in so far as it affects the property of the applicant (Act of 1946, First Schedule, Part IV).

The order may be quashed by the court only in the following cases:

(a) *Where the order is ultra vires.*

The obvious case falling within this heading is an order for which the acquiring authority have no proper statutory authority; in this connection, it should be appreciated that, as its title suggests, the Act of 1946 merely provides the machinery for compulsory acquisition; in addition the acquiring authority must be able to cite a statutory provision permitting compulsory acquisition for the purpose intended.

Apart from this example of *ultra vires*, however, the courts will quash a compulsory purchase order, if the principles of "natural justice" have not been observed in the course of the making of the order; this means in effect that both the Inspector conducting the local inquiry, and the Minister or other confirming authority when considering the Inspector's report, must act in a quasi-judicial manner, and "hear both sides and must not hear one side in the absence of the other" (*per* Greer, L.J., in *Errington* v. *Minister of Health*, [1935] 1 K. B. 249, at p. 268). This principle was well established in a series of High Court decisions on the Housing Acts, in the course of the 1930's, and it is not possible to discuss the detailed application thereof in the present context.

(b) *Non-compliance with procedure.*

An order may also be quashed by the court on the ground that the requirements of the 1946 Act or of the Regulations have not been complied with in respect thereof, provided that the applicant can establish to the satisfaction of the Court that his interests have been "substantially prejudiced" thereby; the Court will not readily accept such an argument, as will be appreciated from *Frost* v. *Minister of Health*, [1935] 1 K. B. 286.

(c) *Other grounds.*

The First Schedule to the 1946 Act then provides (para. 16) that, apart from the grounds described above, a compulsory purchase order shall not, either before or after it has been confirmed, be questioned in any legal proceedings whatsoever; in particular, therefore, no application for an order in the nature of a *mandamus* or a *certiorari* may be brought. An order becomes operative on the date on which notice of the confirmation thereof is first published as required under the Act.

More Miscellaneous Comments

By W. A. Leach, F.R.I.C.S.

Section 12 (5)

The case of a building erected in 1939 but requisitioned for another purpose before the permitted use had commenced was considered at [1950] J. P. L. 822. I there suggested that it might be contended that land is put to a use when it is adapted for that use, and this view may now be considered in the light of the Ministerial decision that s. 12 (5) (*c*) applies only where the last use has been abandoned ([1950] J. P. L. 844).

This view of s. 12 (5) (*c*) can only be based on the view that non-occupation and discontinuance of use are distinct matters, and that the use continues notionally through periods of non-occupation. That, of course, is eminently reasonable and nobody has ever suggested either under the 1947 Act, or previous legislation that when premises become empty they change into the category of " no use ", thereby requiring planning permission for vacancy, and that on re-occupation for the former use they change from " no use " to that use, again necessitating planning permission.

On re-occupation of the premises for the same purposes the notional continuance of the use becomes an actual continuance, but it is the same use and there is no change of use. The Minister makes an exception to this generalisation, *viz.*, where the last use has been abandoned. In such a case the abandoned use may be resumed where permitted by s. 12 (5) (*c*) and proviso (ii) thereto.

What amounts to abandonment? The institution of a new use would indicate abandonment and if that occurred before the appointed day, s. 12 (5) (*c*) would help if the new use were not a permitted use, for under proviso (i) the irregular use would be ignored and the last regular use prior thereto revived although previously abandoned (subject to proviso (ii)).

The demolition of buildings is not in itself evidence of abandonment (but the right to rebuild free of charge under para. 1 of the Third Schedule would be lost if they were demolished before January 7, 1937, so that the survival of the use might be of little value). The adaptation of buildings so as to be completely unsuitable for the former use might be very good evidence of abandonment. The evidence would be even stronger where new buildings adapted for a different use have been erected.

But if it is possible for a use to be continued notionally, presumably it is equally possible for a use to be commenced notionally. It has been conceded that actual use on the appointed day is not essential. If a new building has been erected for a new purpose, the old use has been abandoned and a new use notionally adopted. To make that notional use an actual use is no more a change of use than to make the notionally continued use an actual continued use.

The Minister's decision seems, therefore, to support the views expressed in the matter referred to at the beginning of this note.

Thus so far as s. 76 of the Act applies to uses, it would seem to apply to uses notionally adopted as well as to uses actually established before the appointed day, and s. 77 must be read accordingly. Similarly, the logical application of the principle of notional continuance of a use means that para. 2 of the Third Schedule applies as of right to houses existing but not occupied on the appointed day.

But against what an involved and changing background the valuer has to try to settle Part VI claims and development charges! Is it wise to settle any Part VI claim other than of the most simple character except "without prejudice to the right to re-open the matter in the light of future legislation, case law, and official policy"?

Continuance of Uses after the Appointed Day

The above arguments may now be applied to circumstances after the appointed day.

When premises become vacant there is no change of use to "no use" and when re-occupied for the former purpose no change of use to the former actual use. The use is notionally continued until actually continued. If, however, the use is changed both the actual and notional continuance of the former use are broken. Thus even if the use is materially changed without permission a further voluntary material change back to the original use will require permission, for it is only when an enforcement notice is served that s. 24 (4) allows the return journey without permission (which gives some indication of the damage reckless lessees may do).

It would seem that even a temporary use would break the notional continuance of the former use (hence s. 12 (5) (*a*) and

s. 18 (5)) but under s. 18 (5) the former use may be resumed when the permission for the temporary use *has expired*, but not, it would seem on a strict reading, during the currency of the permission.

This is in no way contrary to the possibility of there being concurrent uses, as described by Dr. Potter at [1950] J. P. L. 802–3. Indeed concurrent uses are by no means uncommon, *e.g.*, offices and showrooms (where it would often be difficult to say that either was the predominant or the incidental use), offices and workrooms, business and residence. Also since uses can survive disuse, a concurrent use may be permanent although only exercised occasionally, *e.g.*, land permanently equipped for a seasonal or occasional purpose and also used for another purpose. Parallel with this, planning permissions are being granted for multiple uses, *e.g.*, shops, offices, storage and light workrooms.

Persons Liable for Development Charge

The phrasing of s. 74 (2) (as pointed out by Dr. Potter, [1950] J. P. L. 807) is not a model of clarity, but a surveyor's view may be of interest on this matter. In the first place, the persons chargeable are (1) the person by whom the operation was carried out or use instituted (*i.e.*, the developer), and (2) the person by whom *the use* is continued. The interest (in the land) of the developer, and in the case of a use, the interest of the person continuing the use may be charged in respect of the development charge : also the interest of any other person may be charged if he holds that interest as successor to a person chargeable (but no other method of recovery from the successor is possible). Thus a freeholder taking over the reversion in buildings erected by the lessee is not chargeable in respect of those buildings, for erecting buildings is not a use of land (s. 119 (1)) and the freeholder is not successor in title to the lessee's interest, which in fact has ceased to exist; but the interest of an assignee of the lessee would be chargeable because he is successor in title to the interest of a chargeable person. In the case of a use the freeholder would become liable for the charge on continuing the use, and since it appears that a use may be notionally continued, he would perhaps be chargeable unless in some way (*e.g.*, express statement to that effect) he abandons the use (which will leave no available use of the land).

What also seems to be difficult is that, under s. 70 (2), a development charge is to be assessed on the difference between the value of the land with the benefit of a planning permission and without that benefit. If there is no permission there is no basis for assessing the charge, so that if the time for serving an enforcement notice has passed it may be that the liability to charge is ended.

If, however, there has been a permission it will always be important to satisfy oneself that the charge has been paid, and it is essential on granting a licence for a change of use, or letting for a new use, or on acquiring premises in respect of which any development permission has been granted to the vendor or his predecessors in title or any use permission to anybody, to insist on production of the receipt for the development charge (in the first two cases before the new use is commenced), or, failing the receipt, confirmation of payment from the Central Land Board.

Compensation under Section 20

The question has been raised from time to time as to the position if a right of claim arises under s. 20 and the claim is not made within the period of six months prescribed in the General Regulations (SI 1948, No. 1380, reg. 4 (2)). Under s. 20 (1) there is no liability on the local planning authority to pay compensation except " on a claim being made ". Consequently if no claim has been made compensation would seem not to be payable, in which event proviso (*a*) to s. 51 (2) will not apply in the event of compulsory acquisition. The same position arises where action is taken in respect of existing uses under s. 26 (see s. 27 (1) and s. 51 (2) proviso (*b*)).

As regards the expiry of the period for making a claim, an application may be made to the Minister for an extension of time or a fresh planning application made and the claim submitted on the new refusal. In fact it appears that there is nothing in s. 20 to prevent a series of applications, refusals, claims and payments of compensation in respect of the same matter !

The Chartered Auctioneers' and Estate Agents' Memorandum

The concluding paragraph of this Memorandum ([1950] J. P. L. 848) is that the proposals would not involve the sacrifice of any legitimate *public* interest. They would, of course, involve the sacrifice of private interests, but perhaps it is thought that justice to the individual is not a matter of public interest. The general theme is that there should be no compensation for planning restrictions and no development charge for developers. That is grand for the owner who is allowed to develop.

If as a result of a planning refusal land is incapable of reasonably beneficial use it is suggested that the owner should be entitled to serve a purchase notice; but if there is no right to compensation for restrictions, "reasonably beneficial use" must in effect mean "incapable of use". It would be illogical to deny an owner compensation for the restrictions as such, but to pay a purchase price exceeding the bare value of his land as subject to the restrictions.

Despite the optimism of the Memorandum, valuers would find it difficult to value land, which, as a result of changes in a development plan might become almost valueless. It was not always easy to value under the 1932 Act (widely ignored in practice), but under the proposals valuation would often be sheer guesswork modified in the light of any "inside information" that might be available. Note especially para. (*e*) on p. 854.

MINISTRY OF TOWN AND COUNTRY PLANNING CIRCULARS

[*Continued from* [1950] J. P. L. 878]

Circular No. 99, dated November 24, 1950. Safeguarding of Agricultural Land. [2*d*.]

Circular No. 100, dated December 7, 1950. Development by Government Departments. [2*d*.]

Procedure and Evidence at Public Local Inquiry

West Hartlepool Development Plan

By HAROLD J. BROWN, LL.M., D.P.A., L.A.M.T.P.I.,
Barrister-at-Law

Introduction.

The first public local inquiry in relation to a full development plan under the Town and Country Planning Act, 1947, commenced at West Hartlepool, on November 21, 1950, before Mr. E. Fitzgibbon, the Minister's Inspector. This was an inquiry into the development plan proposals of the West Hartlepool County Borough Council, and in view of the statutory duty of every local planning authority to submit their proposals to the Minister before July 1, 1951, it is no doubt to be followed by many similar inquiries although it may be observed that no inquiry was held in connection with the Tynemouth County Borough Council's plan which has now been confirmed, see *ante*, p. 2.

The only previous development plan inquiry under the Act of 1947, was in respect of the West Sussex County Council's Shoreham and Lancing Beaches Part Development Plan, held earlier this year.[1]

In the case of West Hartlepool, a town with a population of some 72,000, there were 263 objectors and the hearing extended to eight days.

Form and Content of the Plan.

Ministry Circular No. 40 afforded guidance to the local planning authorities as to surveys for development plans. Detailed requirements as to the form and contents of plans are laid down in the Development Plans Regulations, 1948 (SI 1948, No. 1767), and in Ministry Circulars Nos. 59 and 97.

Maps.

The West Hartlepool plan included the following maps :

1. Basic (Town) map.
2. Basic programme maps, showing development estimated to take place in the first 20 years.

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[1] Confirmation of this plan, for part only of the area of the local planning authority, was noted at [1950] J. P. L. 240.

3, 4, 5. Comprehensive development area maps for three areas.

6, 7, 8. Programme maps for the three comprehensive development areas, showing development estimated to take place in the first and second ten-year periods, and subsequently.

9. Designation maps for two of the comprehensive development areas.

10. Street authorisation map, showing for the purposes of s. 47 of the Act of 1947, the sites of two lengths of road which the authority propose to construct within five years.

Other maps on view at the inquiry were those detailing land use, age of buildings, open spaces, cleared sites and derelict properties, road and rail traffic, and surveys and plans for 1847, 1860, 1900, 1920, and 1950. There were also models of three parts of the area as they would eventually appear if redeveloped in accordance with the plan.

Written Statement.

The written statement accompanying and forming part of the plan comprised, as required by the Development Plans Regulations, a summary of the main proposals of the plan —brief references to population, communications, industrial land, shopping areas, residential areas, provision for education, and open spaces. Also, for each of the three comprehensive development areas, a statement of the proposed zoning and the purposes of the proposals, and a use zone table, showing in relation to the area, the main types of development which would be permitted or disallowed or decided on in the circumstances of the particular case. Also, short explanations of the street authorisation map, the designation maps, and the programme maps.

General Arrangements at the Inquiry.

At West Hartlepool the inquiry was held in a large hall at the Town Hall, the Inspector being on a slightly raised dais, with accommodation for counsel and solicitors facing him, and behind them the objectors and witnesses. The large gallery was open to members of the public. The stage behind the Inspector was allocated to representatives of the press.

An amplification system was used, microphones being placed for use by the Inspector, the witness under examination, the Town Clerk, and counsel.

A large basic map of the whole area, the zoning proposals indicated by colours, was placed facing the hall for reference during the hearing. Other maps, when required, were mounted on an easel.

Representation of the Objectors.

There were in all, 263 objectors. Six members of the Bar appeared for various objectors, Michael Rowe, K.C. (with W. B. Harris) appearing for 224 of them, most of whom were members of Hartlepools Chamber of Trade. A number of solicitors appeared on behalf of other objectors, and some objectors were not represented.

A point to be borne in mind when a large number of objectors combine to brief the same counsel is that an objector who is represented by counsel or solicitor is not also entitled to take part in the proceedings himself. This was illustrated on the second day of this inquiry when one of the objectors represented by counsel himself sought to question a witness, but was not allowed to proceed.

The local planning authority in this instance were represented by their Town Clerk.

Procedure—generally.

An inquiry which covers such a vast field of investigation and at which there are a large number of objectors and witnesses presents very considerable procedural difficulties. The Inspector exercises a wide discretion as regards the receiving of evidence and the order in which it is submitted. The circumstances tend to require modification, perhaps to a considerable extent, of the normal court procedure where the plaintiff's case is opened and his witnesses examined and cross- and re-examined, and the defendant's case then opened, and his witnesses examined, cross-examined, and re-examined, followed by the closing speeches on either side.

On the other hand it is necessary for the procedure to be such that the views of all parties may be adequately expressed. At the inquiry for the Shoreham and Lancing Beaches Plan, referred to above, the procedure adopted by the Inspector, acting in accordance with his instructions, was that the objectors were required to open their cases and produce their evidence without any evidence having been given or even a preliminary statement made by the local planning authority. Counsel for certain of the objectors protested strongly against this at the time, pointing out that it operated very unfairly against the objectors, since no case had been made out by the authority to which they could object. Representations were made subsequently in relation to this matter, and Ministry Circular No. 95 [2] has now been issued, indicating that the procedure at development plan inquiries should substantially be that adopted in declaratory order inquiries under the Town and Country Planning Act, 1944.

The procedure recommended in this Circular provides for the following main stages:

1. An opening statement by the representative of the local planning authority, in which it may be advisable to deal in detail with certain points which have been the subject of several objections or of possible misapprehension.

2. The calling by the local planning authority of general supporting evidence, cross-examination at this stage being limited so far as possible to matters of general interest.

3. Presentation of the cases of each of the objectors, in the order agreed with the Inspector. The *authority's* witnesses may at this stage be recalled by the objectors for cross-examination on points of detail, with re-examination by the authority's representative, and the objectors may also call witnesses and submit evidence. The authority may at this stage answer the individual objections, the hearing of the case for each objector concluding with an opportunity for the objector or his representative to sum up his case.

4. The local planning authority's representative may conclude with a general review of the proceedings, but may not discuss fresh aspects of the plan.

Procedure at West Hartlepool Inquiry.

At the inquiry at West Hartlepool this procedure was, broadly speaking, followed. Early in the proceedings the representatives of the objectors indicated that they would, in general, prefer to have the Corporation's witnesses recalled for cross-examination in connection with the presentation of their own cases. A distinction was necessarily drawn, however, between the principal technical witnesses for the Corporation, *viz.*, their planning consultant and certain chief officers of the authority, who were to be present throughout the inquiry, and other non-technical witnesses whose continued presence throughout the hearing was not essential.

In the case of the latter witnesses, any cross-examination and re-examination had to take place following their examination by the Town Clerk. Some cross-examination of a general nature, and re-examination, also took place immediately following examination in chief in the case of some of the other witnesses such as the Borough Treasurer, when the evidence had been of a rather general nature. On one occasion counsel for the objectors requested that a particular matter (the rate of re-building that would be possible) should be dealt with in greater detail by the Corporation's witness in his evidence in chief.

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[2] See [1950] J. P. L. 829.

The procedural difficulties involved became apparent especially on the third day of the hearing when the objectors had commenced to present their cases. The Corporation's principal witness, the planning consultant who had prepared the original plan, had been recalled and cross-examined at some length by the senior of the counsel for the objectors (Mr. Rowe), on matters which had not been the subject of his examination in chief. The Town Clerk protested that as a result of this he would have to call other witnesses to reply to the new matters thus raised, his re-examination of the witness would be affected by the knowledge that other counsel were to follow with their cross-examination of the witness, and other counsel who were not present during the preceding cross-examination might return and cross-examine on the points already covered by the previous counsel. The Inspector indicated that he would prefer that questions should be restricted to matters not already covered. Counsel pointed out that the Town Clerk had not closed his case and it was open to him to call further witnesses if new evidence had been brought out by the cross-examination, and he himself could not control other counsel who were to follow, nor could he undertake that they would not cover the same ground.

The order of taking the objections depended, with the concurrence of the Inspector, to some extent upon the availability of the various representatives of the objectors, some of whom were not able to be present throughout the hearing. This matter was largely left to the representatives to arrange amongst themselves.

Opening Statement for the Local Authority.

The Town Clerk, Mr. E. J. Waggott, opened the case for the Corporation with a speech of about 1½ hours in which he outlined the very rapid growth of the town during the 19th century, and commented upon present features of the

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47	C.L.B., Chairman and Secretary. See now [1949] 597.
64	T. & C. P. (Making of Applications) Regulations, 1948. *Revoked.* See now SI 1950, No. 728, [1950] 432 ff.
82–5	T. & C. P. (Making of Applications) Regulations, 1948. *Revoked.* See now SI 1950, No. 728, [1950] 432 ff.
136	Compensation for war-damaged land. See *East End Dwellings Co.* v. *Finsbury B. C.*, [1950] 420, 893.
142	Time limit for claims. See [1949] 105.
144	T. & C. P. (Making of Applications) Regulations, 1948. See now SI 1950, No. 728, [1950] 432 ff.
145	T. & C. P. (Use Classes) Order, 1948. *Revoked.* See now SI 1950, No. 1131, [1950] 603.
149	T. & C. P. (General Development) Order, 1948. *Revoked.* See now SI 1950, No. 728, [1950] 432 ff.
209	Use Classes Order, 1948. See now [1950] 603.
214	General Development Order, 1948. See now [1950] 432 ff.
218	Making of Applications Regulations, 1948. See now [1950] 432 ff.
222	Time limit for claims. See [1949] 105.
231	Scheme under s. 59. See [1950] 51–64.
236	T. & C. P. (Development Charge Exemptions) Regulations, 1948. *Revoked.* See now SI 1950, No. 1233, [1950] 609.
264	Making of Applications Regulations, 1948. See now [1950] 432 ff.
267	Development Charge Exemptions Regulations. See now [1950] 609.
302	Compulsory acquisition by C.L.B. See *Earl Fitzwilliam's Case*, [1950] 694.

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305 Development Charge Exemptions Regulations. See now [1950] 609.
Agricultural cottages. See [1948] 607, [1949] 114.

313 Local Land Charges Amendment Rules, 1948. See Amendment (No. 2) Rules, [1949] 27.

314 T. & C. P. (Erection of Industrial Buildings) Regulations, 1948. *Revoked.* See now SI 1949, No. 1025, [1949] 422.

322 T. & C. P. (Tree Preservation Order) Regulations, 1948. *Revoked.* See now SI 1950, No. 534, [1950] 365.

332 T. & C. P. (Control of Advertisements) Regulations, 1948. *Amended.* See SI 1949, No. 1473, [1949] 520.

394 Near-ripe land. See also [1949] 385, 429.

451 Tree Preservation Order Regulations. See now [1950] 365.

467 General Development Order, 1948. See now [1950] 432 ff.

516–21 Purchase by C.L.B. See *Earl Fitzwilliam's Case*, [1950] 694.

551 Use Classes Order, 1948. See now [1950] 603.

609 Erection of Industrial Buildings Regulations, 1948. See [1949] 422.

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5 Claims on the global fund. Last day for claims. See [1949] 105.

15 Scheme under s. 59. See [1950] 51–64.

21 General Development Order, 1948. See now [1950] 432 ff.

23 Erection of Industrial Buildings Regulations, 1948. See now [1949] 422.

29–35 General Development Order, 1948. See now [1950] 432 ff.
Use Classes Order, 1948. See now [1950] 603.
Development Charge Exemptions Regulations, 148. See now [1950] 609.

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73 Claims on the global fund. Last day for claims. See [1949] 105.

76 "Open market". See *Priestman Collieries, etc.*, [1950] 588.

131 Development Charge Exemptions Regulations, 1948. See now [1950] 609.

151 Development Charge Exemptions Regulations, 1948. See now [1950] 609.

161 Development Charge Exemptions Regulations, 1948. See now [1950] 609.

174 Development Charge Exemptions Regulations, 1948. See now [1950] 609.

181 Development Charge Exemptions Regulations, 1948. See now [1950] 609.

General Development Order, 1948. See now [1950] 432 ff.

220 General Development Order, 1948, Amendment Order. *Revoked.* See now [1950] 432 ff.

240–1 General Development Order, 1948. Making of Applications Regulations, 1948. See now [1950] 432 ff.

244–7 Development Plan Inquiries. See Circular 95, [1950] 829.

257 Applications under s. 17. See now [1950] 432 ff.

260 General Development Order, 1948, Amendment Order. See now [1950] 432 ff.

286 General Development Order, 1948. See now [1950] 432 ff.

296 Movable dwellings. See *Pilling* v. *Abergele U. D. C.*, [1950] 185.

309 General Development Order, 1948. See now [1950] 432 ff.

Development Charge Exemptions Regulations, 1948. See now [1950] 609.

374 Demolition Order. See Housing Act, 1949, s. 3, [1949] 583.

388 Requisitioned land. See also [1950] 34.

399 Vertical division. See now [1950] 122.

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448	Vertical division. See now [1950] 122.
466	Control of Building Operations (No. 13) Order, 1949. *Revoked.* See No. 14, [1950] 66.
552	General Development Order, 1948. See now [1950] 432 ff.
	Development Charge Exemptions Regulations, 1948. See now [1948] 609.
620–3	Vertical division. See now [1950] 122.
652	*Crisp from the Fens* v. *Rutland C. C.* Affirmed, [1950] 123.

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146	Party-wall, breaking. See [1950] 514, 601.
154	Party-wall, breaking. See [1950] 514, 601.
283	*Harlow* v. *Minister of Transport.* Reversed, [1950] 893.
420	*East End Dwellings Co.* v. *Finsbury B. C.* Reversed. [1950] 893.

town and the proposals embodied in the development plan. The most controversial feature of the plan was the proposal to move the main shopping centre, at present spread out over several streets on the East side of the town, to a new area further to the West.

Reference was also made to the various steps leading up to the preparation of the present plan. A town planning consultant had been engaged in 1945 and had prepared the plan after exhaustive investigations and consultations with local bodies. It was emphasised that the plan provided only for the sites of new buildings and not for the new buildings themselves—the cost of the new buildings did not arise out of the plan itself.

Particulars were given of the shops in the present shopping streets, and of the existing state of disrepair in many cases. Any building which had a useful life remaining would be preserved as long as possible, and the Council had not set any time limit for the full implementation of the plan.

Supporting Evidence for the Local Authority.

The Town Planning Consultant, Mr. Max Lock, was the first witness for the Corporation. He described the work of preparing the plan, the consultations held with members of the public and various organisations, and the principal purposes the plan was designed to effect, especially the problem of the shopping area.

The Borough Engineer, Mr. J. S. Miles, described the existing uses of the land in the central area, the state of the buildings, and the density of population. He also gave particulars of the present policy of the Corporation concerning "interim" development in the central area.

He indicated that sites in the new area might be allocated by a joint committee of traders and the town planning committee. Failing voluntary action by the traders to acquire land in the new area, the Corporation might, in the second five-year period of the plan, compulsorily acquire part of the land in the new shopping area, and offer sites on long leases, or failing that, might themselves build shops.

The Chief Rating Officer, Mr. J. Manson, gave particulars of the rateable value of shop properties owned by various multiple stores in West Hartlepool and in the neighbouring towns of Darlington and Stockton. This evidence, apparently designed to indicate the lower value of premises in West Hartlepool in comparison with other towns, resulted in a number of questions and interjections by counsel, objecting to the irrelevancy and uncertainty of the evidence, which did not even take into account the size and area of the premises of which particulars were given.

The Borough Treasurer, Mr. A. Limon, gave particulars of the estimated cost of the proposals relating to the two main redevelopment schemes. The net cost was given as £1,780,000 which over a period of 100 years would involve annual charges of about £15,000—a rate of 9d. in the pound. This did not take into account the town planning grants which would be payable to the Corporation, nor any reduction which might result from the increase in the general equalisation grant payable by the central government—but also, it was agreed, it did not take into account the increased financial burden falling on the tax-payers.

In cross-examination, Mr. Limon gave the cost involved during the next eighty years for all purposes as £5½ million, of which £3½ million would fall on the rates. If no deduction for equalisation grants were made, the burden on the rates between ten and thirty years from the present time would be about 4s. in the pound. If costs rose, the speed of implementation of the plan would probably have to be restricted

Alderman Arnison, the Mayor of West Hartlepool, gave his opinion that the plan was sound and practicable. He had understood that most shop-keepers were in favour of transfer to the new area. Tenants might have to pay higher rents but would get better amenities.

Alderman Bloom, who owned and occupied several shops, four of them in the existing shopping district in the central area, said he thought the plan was an excellent one and would be of benefit to the traders.

The Town Clerk, at this stage, in answer to counsel for the owners of a cinema in the proposed new shopping area, gave an assurance that there was nothing in the plan which would threaten the existence of the cinema, and thereupon it was indicated that the objection in respect of this property might be withdrawn. It should here be noted, however, that later in the inquiry the Inspector pointed out that Ministerial modifications to the plan might make it impossible to fulfil assurances of this nature.

Nine other residents, some of whom were members of the Council, gave further evidence of a general nature in support of the plan. This concluded the case for the Corporation, which had occupied two days.

The Cases of the Objectors: Cross-examination of Corporation's Witnesses.

The Planning Consultant, Mr. Lock, was recalled for cross-examination by the objectors. He agreed that there was anxiety lest the conditions of comparative prosperity in the town should not continue, as had happened after the 1914–18 war. He thought the plan would be a good investment even if the economic future were uncertain.

With regard to the shopping centre, in 1947, he had hopes that its transfer could be completed in ten years, but he now thought it would take fifteen or possibly twenty years. The possibility of retaining the existing shopping centre had been fully considered but found to be impracticable. It was inevitable that one or two good buildings should have to be sacrificed.

The Town Clerk at this stage, in answer to counsel for a club known as *The Athenæum* stated that the Council had no intention of demolishing this building, or of not allowing the shops underneath it to remain. The objection in respect of this building was thereupon withdrawn.

The Borough Engineer, Mr. Miles, in cross-examination agreed that the building of the new shopping centre would be a costly item. In reply to suggestions that having regard to the demands for housing the programme for the shopping area was too optimistic, he said that the shop-keepers would be living and working in ruinous properties if some building labour was not used for shops.

The Planning Consultant, Mr. Lock, was recalled for further cross-examination by counsel for two other objectors. He agreed that there was a need for some shops for the commercial interests. He said that his approach certainly had not been that the town could be rebuilt *de novo*. Provision for cinemas had been made adjacent to the shopping area.

In re-examination of Mr. Lock, the Town Clerk read a newspaper account of a statement in December, 1948, by the managing director of the South Durham Steel and Iron Company, indicating that the works of that company had been modernised. He also stated that certain ship-building firms had obtained very large orders.

The Borough Engineer, Mr. Miles, was recalled for further cross-examination by other counsel, directed to whether it was necessary to move the shopping area, and to the additional expense which would fall on the shop-keepers.

Address by Counsel for the Objectors.

Michael Rowe, K.C., the senior of the counsel for the objectors, then addressed the Inspector, indicating that he intended to show that the proposals relating to the central area, especially the shopping centre, were inadvisable and impractical.

He criticised the proposal to make the central area an area of comprehensive redevelopment without designating any part of it as subject to compulsory acquisition. S. 5 of the Act provides that designation of an area as subject to compulsory acquisition shall not take place if there is no likelihood of acquisition within ten years. The implication was that the Corporation in this case thought that no part of the area was likely to be in such a state that it had to be acquired within ten years. The Act did not contemplate that large central areas should be zoned for redevelopment when the prospect was so remote that no part of the area could be designated for compulsory purchase. The part of the area intended for the new shopping centre was not war-damaged or badly laid out or obsolete, and was not intended for the relocation of population or industry.

The proposals to move the shopping centre were said to be uneconomic and impracticable and the traders were united against the plan.

On the financial side the cost of the plan together with the increase in cost for other proposals for housing and education might increase the rates by 9s. in the pound. The Borough Treasurer had said that spread over 100 years this would mean 9d. in the pound, but this was not a real figure—one could equally say that over a thousand years it was only 1d. in the pound.

Reference was made to the other calls on national capital expenditure, the availability of labour and materials for rebuilding, and the question as to whether sufficient financial aid would be provided by the government. The scheme would result in ruining the old without producing the new, and the traders would suffer great loss.

Further Evidence and Speeches for the Objectors.

Mr. Gifford, for one of the multiple shops in the present shopping area, said that most of the existing shops had a further life of at least 25 years. If not allowed to be modernised they would decline and trade would go to other towns.

In cross-examination by the Town Clerk, he would not agree that there had been any drift away from the present area.

Mr. King, President of the West Hartlepool Chamber of Trade and managing director of a grocery store, said that the plan was not practical, and the cost of it had been forgotten.

Three other witnesses also gave evidence in relation to the proposal to move the shopping area, and were briefly cross-examined by the Town Clerk.

The Borough Engineer, Mr. Miles, was then recalled by counsel for certain other properties in the central area, and gave evidence as to the condition of the buildings and the proposals relating to the particular sites in question.

The owners of these properties, which included the Lex cinema, which would eventually be demolished under the proposals, gave evidence as to the condition of their buildings.

Counsel for the owners of the Lex cinema, then addressed the Inspector, referring to the loss which would be suffered by the owners if obliged to move to a new site.

The Borough Engineer, Mr. Miles, was again recalled, for cross-examination by counsel and solicitors for certain other property-owners.

Counsel and solicitors for other objectors then addressed the Inspector, emphasising the financial burden which the plan would entail, and the hardship that would be suffered by property owners.

Councillor Soden-Bird, who had not previously given notice of any objection, came forward and was allowed to give evidence opposing the plan. He was not allowed, however, to give evidence in his capacity as a member of the Council, and was repeatedly restrained by the Inspector from giving evidence as to happenings at Council meetings and information he had obtained as a councillor.

The Borough Engineer, Mr. Miles, was recalled on three further occasions by counsel for other owners of premises, his evidence relating chiefly to the condition of the buildings in question.

A chartered surveyor and an architect also gave evidence as to these properties, and were cross-examined by the Town Clerk.

Mr. T. R. Hannon, a "rate-payer, tax-payer, property-owner, and working-man" who owned some Turkish baths in the town was the final objector to give evidence. He thought that property-owners would not get sufficient compensation for their property, and suggested that a town poll should be taken.

Concluding Address for the Corporation.

The Town Clerk, Mr. Waggott, finally addressed the Inspector, summing-up the Corporation's case for the plan. He referred individually to the main properties in respect of which objections had been made.

The Inspector closed the inquiry after he had thanked those who had taken part in it, and complimented the Town Clerk on his presentation of the council's case.

MINISTRY OF HEALTH CIRCULARS

[*Continued from* [1950] J. P. L. 878]

Circular 109/50, dated December 7, 1950. Acquisition of Land, Lapse of Temporary Powers under s. 2 of Acquisition of Land, etc., Act, 1946.

Parliamentary Intelligence

Bill to amend ss. 12 *and* 23 *of Act of* 1947

A Town and Country Planning Bill was given its first reading in the House of Commons on December 12, 1950, and has now been published.

Clause 1 of the Bill provides that works for making good war damage shall be excluded from s. 12 (2) (*a*) of the Act, which provides that works for the alteration, etc., of a building which affect only the interior of the building or do not materially affect its external appearance shall be deemed not to be development. Where such works would otherwise fall within that provision they are to be included within paragraph 1 of the Third Schedule, and will accordingly be exempt from development charge, although not from the requirement of obtaining planning permission. Where commenced between July 1, 1948, and December 13, 1950, unconditional planning permission will apply. Clause 3 makes the corresponding amendment to the Scottish Act of 1947.

Clause 2 of the Bill amends the " hole in s. 23 " of the Act of 1947 [1] by allowing an enforcement notice to be served, in a case of non-compliance with a condition, within four years of the date of the alleged failure to comply with the condition. Any applications of s. 23 to particular matters are to have effect subject to a similar modification.

Single Plot Owners Near Ripe Land

In the House of Commons on November 7, 1950, (H. C. Debates, Vol. 479, col. 34) :

In reply to Sir H. Lucas-Tooth, who asked why the concession in favour of owners of single house plots is limited to persons who start to build a house on their plot before January 1, 1953, the Chancellor of the Exchequer (Mr. H. Gaitskell) stated that January 1, 1953, was selected because the £300 million has to be distributed before July 1, 1953, and a few months will be needed for the administrative arrangements.

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[1] Attention was first drawn to this by Mr. Desmond Heap (see [1948] J. P. L. 585). By Circular No. 69, dated March 17, 1949, in paragraph 7, the Minister of Town and Country Planning advised local planning authorities " to determine applications on the assumption that adequate powers of enforcement will be available to them at the appropriate time ".

The claims of single plot owners who cannot start to build by January 1, 1953, will receive further consideration when the scheme for distributing the £300 million is being prepared.

Financial Provisions of the Act

In the House of Commons on November 21, 1950 (H. C. Debates, Vol. 481, cols. 170–1):

In reply to Col. Hutchison and Mr. Hudson, the Parliamentary Secretary to the Ministry of Town and Country Planning (Mr. Lindgren) expressed gratitude to the professional bodies who have given their considered opinions upon the working of the Act in practice. The present situation did not allow any radical alterations to be made.

Development in Barsetshire

Tree Preservation of Woodlands

S. a Solicitor is found in his office interviewing C. his client.

C. I got this by registered post this morning; it's all just as I received it (*hands an envelope to his solicitor who opens it and extracts the contents*).

S. Ah! a tree preservation order on woodlands [1] at Inglepoint Hill, made by the Barsetshire County Council. I take it you own these woodlands?

C. Well I own a wood about two acres next to the main road. Is that the one they mean? I believe it's called Harebell Wood in my conveyance.

S. The first Schedule to the Order refers to Harebell Wood. It's numbered W.4 on the Plan and is described as "Mixed Hardwoods". That must be it. If it is any comfort, you are not the only one to be bothered because there are three other woodlands included here.

C. One of them belongs to Peacocks, the timber people but I bought mine simply as investment at the end of the war when no one was sure what would happen to stocks and shares. What's this order mean? I had an enquiry from Peacocks the other day. They want to take mine off my hands; offered a fair price too. Will this Order stop that?

S. No, it won't stop you selling, if (and it's a big "if") Peacocks still want to buy. The effect of this Order is that you will require the consent of the county council before you fell any of the trees in the woodland. You will still, of course, have to get a licence to fell from the Forestry Commission.

C. Yes, but if I only bring down 275 cubic feet a month, I need no licence.

S. I'm afraid you will still need to apply for permission to the county council. This applies even to topping or lopping and off-hand I can only recall thinning operations [2] as being exempt from the need to get prior consent.

C. I shan't be able to see the wood for the forms! But look here, what about the trees at the road side which the county council have been pressing me to fell on account of danger to road users. Do I have to ask them now if I can do what they ask me to do?

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[1] Single trees or groups of trees can also be the subject of Orders but have several points of difference from woodlands, *e.g.*, there is no obligation under the Order to replant trees or groups of trees.

[2] See p. 11, para. 31 of the Explanatory Memorandum on the Preservation of Trees and Woodlands.

S. That is one of the exceptional cases where you can go straight ahead without any bother. Look (*turns pages of Order*) here is the Second Schedule to the Order which says when you need no permission to fell—" any tree that is dying or dead or has become dangerous ". That is only one of the cases but for practical purposes the others are not so important.

C. With all these restrictions I can see why you think Peacocks may not want to buy now. But suppose they don't and I cannot get the same price as they have offered me. Can I claim compensation for the difference?

S. No, not for that. There *are* provisions for compensation, but they only come into operation if you want to fell some trees and the county council refuse you or impose conditions upon the consent. Then you can claim compensation for damage or expenditure incurred.

C. You mean for example, that if they required me to replant I could get back my expenditure?

S. I'm sorry to be so cheerless this morning, but again I am afraid the answer is " No ". I have not mentioned this before, but the second principal effect of the Order is to require you to replant whenever you get consent to fell.

C. And you mean to say that I shall get nothing towards it?

S. Nothing at all, unless you are interested in a dedication scheme with the Forestry Commission.[3] Mark you, for any other condition, you would get compensation, but replanting is required by the order and is not a condition at all really. A condition requiring you not to fell for five years is the sort of thing which gives rise to compensation.

C. Surely there is something I can do about this business. I tell you, I am not going to take it lying down—forms and consents and red tape-stuff and nonsense! Why did they pick on me, anyway?

S. I will have to get a sight of the County Council's statement of reasons to answer you precisely, but speaking generally your woodland must be considered to add something appreciable to the amenities of the area.

C. So do hundreds of other woodlands. Can we fight them on that?

S. Well, I can enter a formal objection to the Minister and look into it meanwhile. Amenity is a difficult thing to argue about you know. I shall have to find out whether there are public walks near to your woodlands, whether the road adjoining is improved by your trees being there; whether the wood is a landmark or of particular charm before I can say whether you've any case for saying they have no amenity value.

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[3] See [1950] J. P. L. 279.

C. Perhaps you had better consider those points before we do anything to put in an objection.

S. I will, but I would also like to suggest that you let me get in touch with the County Planning Department and find out what sort of woodland management scheme [4] they would produce for your woodland.

C. What's the advantage of that. Isn't it rather like treating with the enemy?

S. I would advise it in your case. They may say, for example, that you can fell all the trees you like when the order is confirmed, provided you replant. Often these Orders are designed to secure replanting more than anything else.

C. If there was no difficulty in getting permission from the County Council, I think Peacocks would go on with the purchase and I'd be glad to be rid of my investment after what I've learned.

S. Exactly my idea. If, on the other hand, we learn that consent to fell is to be refused or deferred for several years, we can weigh up the probable extent of compensation and so forth and decide what to do. Mind you, the County Council are not bound to answer our queries, but I've no doubt they will be reasonable.

C. I don't want to be unreasonable either. I quite agree with preserving amenities and so forth, but I would prefer it was not at my expense. I look to you to see that it isn't. Here are all the papers. I will leave them with you. (Shakes hands and goes.)

S. (*musing*). H'mm "a thing of beauty is a joy for ever" hardly applies to woodlands to-day from the owner's point of view. Lucky I didn't tell him all the cases when compensation for refusal to fell can be excluded under the Order [5]—no point in worrying him with that until I've seen the County people and find out if they regard no compensation as a possibility. Besides I had better get the provisions of the order clear in my own mind first before I go much further. (*Starts to read through the Order.*)

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[4] See Explanatory Memorandum, para. 30, p. 11.

[5] See Clause 6 of the Model Order and paras. 44 *et seq.* of the Explanatory Memorandum.

Central Land Board Practice

Section 59 Scheme—Claim for Rentcharge Payment

The Central Land Board have issued form S.1/Rent, " Claim for a Rentcharge Payment under the Planning Payments (War Damage) Scheme, 1949 ".

Claims on the £300 million Fund: Contributions Towards Professional Fees

C.L.B./35, dated November 17, 1950

The Central Land Board's contribution towards professional fees incurred in making a claim under the Town and Country Planning Act, 1947, will be sent to the claimant " care of " the agent whose name and address was given in answer to Question 2 of the claim form S.1.

As stated in the Board's announcement of October 11, 1950, the contribution is payable as soon as possible after the determination has become final, provided the conditions set out in paragraph 16 of the Board's pamphlet S.1.A are satisfied.

Development Charge: Advance Assessment for Certain Projects

C.L.B./38, dated December 15, 1950

The Central Land Board have stated (Practice Notes, para. 121) that they cannot normally assess a development charge under Part VII of the Town and Country Planning Act, 1947, unless the development is likely to take place within twelve months.

There are, however, certain large projects such as the redevelopment of a large block of urban property, the building of a large industrial works, or an industrial or housing estate, which have to be planned and carried out over a number of years.

In these cases the developer needs to know his financial commitment at an early stage, and the Board will assess the charge provided that :—

(a) planning permission, at least in principle, has been obtained; and

(b) the applicant can show that any necessary preliminary work, such as demolition of existing buildings or the laying of roads and sewers, will be substantially started within four years; and

(c) the proposed development is in the Board's view likely to be completed in one continuous process.

The Board reserve the right to re-assess the charge if the development has not been substantially started within four years, that is, unless within that period a reasonable proportion of the total estimated expenditure has been invested on preliminary works such as site preparation and improvements.

War Damage Claims under S. 59 of the Act of 1947

C.L.B./37, dated December 11, 1950

The Central Land Board believe there may still be some owners of war-damaged property, entitled to claim a payment under the Town and Country Planning Act, 1947, who have not yet done so.

These claims can be made on certain "total loss" properties where the War Damage Commission assessed a value payment, and must be lodged with the Board before February 1, 1951. They arise because value payments were assessed on the basis that the owner of a blitzed site could realise any extra market value obtainable for it due to its suitability for something more valuable than the replacement of the destroyed building. Sites with this extra development value had a lower value payment, sometimes nothing. The Act of 1947 has now removed development values from private ownership, and owners who are affected can claim in respect of such extra value.

The Board have published an explanatory leaflet on these claims—S.1.A. (War Damage), obtainable from the local offices of the Board and the War Damage Commission.

Payments are in cash and include interest. They are separate from the £300m. on which claims had to be lodged by June, 1949.

SUPPLEMENT TO PRACTICE NOTES (FIRST SERIES)[1] DEVELOPMENT CHARGES IN RESPECT OF MINERALS

This is the special Note which is mentioned in paragraph 97 of the Board's Practice Notes (First Series). It will be incorporated in any revised edition of the Practice Notes.

The Board have as yet comparatively little experience in the assessment and collection of development charge in respect of mineral working since most workings are exempt from charge until July 1, 1951, and the policy set out in this Note is subject to review in the light of future experience.

1. Classes of Minerals.

For the purposes of development charge minerals can be divided into two classes.

(a) **Near ripe Minerals:** *i.e.* broadly minerals in which on July 1, 1948, a mineral undertaker had an interest or was under binding contract to acquire an interest.

(b) **Dormant Minerals:** *i.e.* all minerals except near ripe minerals.

For the purposes of this classification "mineral undertaker" does not include a person (or company) engaged on July 1, 1948, in the winning and working of minerals only for use in connection with agriculture on his own land (*i.e.*, the minerals covered by paragraph 5 of the Third Schedule—see paragraph 6 (*a*) of these Notes). "Interest" means either a freehold interest or a leasehold interest or an interest under a licence conferring the right to win and work minerals, but does not include an option to purchase or lease.

This Note applies primarily to dormant minerals. There are special arrangements for near ripe minerals which will be the subject of a separate pamphlet.

2. Definition of Minerals.

Section 119 of the Act defines minerals as including "all minerals and substances in or under land of a kind ordinarily worked for removal by underground or by surface working, provided that it shall not include peat cut for purposes other than sale". (The winning and working of peat by any person for his domestic requirements is exempt from charge under paragraph 12 of the Schedule to the Town and Country Planning (Development Charge Exemptions) Regulations, 1950

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[1] Printed in full at [1949] J. P. L. 252 ff.

(SI 1950, No. 1233).) For the purpose of provisions in a conveyance reserving minerals to the vendor, "minerals" may mean different things in different districts. Even if a particular substance does not count as a mineral for that purpose, it might nevertheless be a mineral for the purpose of development charge.

3. Ordinary water is not regarded as falling within the definition of minerals. The extraction of water, for example by pumping, does not in the Board's opinion constitute mineral working for the purposes of section 81, although operations for sinking a new well may be development and as such be liable to development charge.

The extraction of brine by, for example,

(1) the tapping of salt water from natural lakes and streams in the strata; or

(2) the pumping of water into the strata to dissolve the salt deposits and the pumping out of the solution;

constitutes the winning and working of minerals within section 81 (1) and as development is liable to development charge.

4. Spoil heaps.

The winning and working of minerals is not considered to be development unless they are worked in or under land. Therefore, where minerals are extracted from spoil heaps, the question whether the operation does or does not constitute development depends upon whether the spoil heaps are land or are chattels resting on land. In the former case the operation would be liable to charge except to the extent that the three year moratorium applies (see paragraph 5 below).

Whether spoil heaps are land or chattels depends on the facts of the particular case and intending developers of spoil heaps will no doubt use the machinery of s. 17 of the Act to have the matter decided.

5. Exemption from development charge.

The principal exemption relating to minerals is known as "the three year moratorium" (see paragraph 97 (ii) of Practice Notes). This is provided by Regulation 4 (1) of the Town and Country Planning (Minerals) Regulations, 1948 (SI 1948, No. 1521) which reads as follows:

> "Where at the appointed day a mineral undertaker has any interest in land which entitles him (whether subject to the consent of another person or not) to win and work the minerals therein (or has a right to acquire such

an interest), no development charge shall be payable in respect of the winning and working of minerals in that land during the period of three years from the appointed day."

The moratorium applies principally to near-ripe minerals. Dormant minerals are within the scope of the moratorium only if on July 1, 1948, a mineral undertaker had a right to acquire an interest in them, *e.g.*, an option to buy or lease the minerals.

6. Other mineral development exempt from charge is :—

(*a*) The winning and working, on land held or occupied with land used for the purposes of agriculture, of any minerals reasonably required for the purposes of that use, including fertilisation of the land so used and the maintenance, improvement or alteration of buildings or works thereon which are occupied or used for the purposes aforesaid (Third Schedule, paragraph 5).

(*b*) The use for the deposit of waste materials or refuse of any land comprised in a site which was on July 1, 1948, used for the purpose of such deposit. (Paragraph 16 of the Schedule of SI 1950, No. 1233—see also the Third Schedule of the Act, paragraph 8, which is rather narrower in scope).

(*c*) Operations carried out under licence under the Petroleum (Production) Act, 1934, *i.e.*, operations for searching for and getting petroleum, and the erection of buildings and plant necessary for such operations. (Paragraph 17 of the Schedule of SI 1950, No. 1233.)

(*d*) Certain operations by highway authorities (see paragraph 8 below).

7. Crown Minerals.

The Commissioners of Crown Lands have informed the Board that (as with surface land—see paragraph 34 of the Practice Notes) they will lease minerals in Crown land on terms inclusive of development charge.

8. Local Highway Authorities.

Land held by local highway authorities for winning and working minerals for highway purposes is excepted from the provisions of Section 82 (Regulation 2 (4) of SI 1948, No. 1461). The winning and working of minerals in such land is therefore liable to development charge except to the extent that the three-year moratorium applies. In some cases the special arrangements for near-ripe minerals will apply (see paragraph 1 above).

Operations carried out by a local highway or improvement authority for the purpose of searching for or working minerals without payment under Section 51 of the Highway Act, 1835, are exempt from charge (paragraph 19 (2) of the Schedule of SI 1950, No. 1233).

9. **Minerals on the Foreshore or Sea-bed.**

Removal of sand and shingle from the foreshore constitutes winning and working of minerals, requires planning permission and is liable to development charge. Where the foreshore belongs to the Crown the arrangements in paragraph 7 will apply.

The winning and working of minerals from the sea-bed (*i.e.*, below low water mark), for instance, by sea dredging, will normally take place outside the area covered by any planning authority and hence no planning permission will be required. Where, however, the site of the operations although below low water mark is within the administrative area of a local authority (for example, in a tidal estuary), the provisions of the Act apply. In so far as minerals in such areas are vested in the Crown, the royalties payable under licences granted by the Commissioners of Crown Lands will be inclusive of development charge (see paragraph 7).

10. **Assessment of Development Charge.**

The general principles set out in Part II of the Practice Notes apply to the winning and working of minerals as to other forms of development. Broadly, the development charge for the winning and working of minerals will, in terms of current value, correspond to the share in the value of the minerals which before the Act was collected by the mineral owner who had granted a mining lease or sold his minerals.

Special considerations arise in the assessment of charge on minerals adjacent to an existing works. Where buildings, plant, or machinery for winning and working or for processing minerals exist at the time the charge is assessed, whether on the land covered by the planning permission or on other land, the Board will proceed in this respect on the same basis in assessing charge as they are required to proceed in determining development values for the purposes of Part VI of the Act (see Regulation 6 of the Town and Country Planning (Minerals) Regulations, 1949—SI 1949, No. 1996). The value of the buildings, plant, and machinery as such will be disregarded, but the fact of their presence will be taken into account in the assessment. The effect of this is that, while the proximity of the works may affect the consent value of the minerals, the charge will not include any part of the value of the buildings, plant, and machinery or of their site, nor will it include the value of the goodwill of the business. (It is likely that most cases where existing buildings are involved will be in the near-ripe category.)

11. Mineral Buildings.

The development charge for the winning and working of minerals will be inclusive of the right to erect buildings, plant and machinery *to be used for that purpose*. The charge for development consisting of the erection or extension of buildings, plant and machinery for the *processing* of minerals will normally be calculated separately from that for the winning and working of the minerals.

The dividing line between buildings, plant and machinery used for winning and working minerals and those used for processing minerals has been drawn after discussion with the industrial interests concerned. Details of the division the Board will adopt are given in the Appendix. The list will be altered or expanded from time to time if necessary.

12. Procedure for Application to determine, or to vary Development Charge.

Part IV of the Practice Notes applies generally to mineral development except that " Mineral Valuer " should be substituted for " District Valuer " throughout.

13. Form of the Development Charge.

A special method of paying charge is available for minerals. The Board may calculate the amount, or any part of the amount, of the charge by reference to the amount of minerals got from time to time and measured by any recognised and appropriate method (SI 1948, No. 1521, Regulation 8 (1)), *i.e.*, the charge may take the same form as a royalty payable under a mining lease. In deciding the form in which to determine charge, the Board are required to take into account any representations made by the applicant. The Board's present policy is as follows:

(*a*) they will normally accept payment either as a single capital payment or as a royalty, as the developer prefers;

(*b*) they suggest that a capital sum may be more convenient since it saves the work of calculating and accounting for many periodical payments, but it is not their policy to depart from payment by royalty where this is the established practice of a particular industry.

Where the development charge includes a royalty the method of assessment and payment will be that normally adopted in the locality for the particular mineral, *e.g.*, payment at so much per ton or cubic yard extracted. In suitable cases provision will be made for a minimum annual payment (corresponding to a dead rent) and for an appropriate short workings arrangement. The minimum annual payment will "merge in" the royalty, *i.e.*, if in any year the amount due in royalty is greater than the minimum annual payment, only the amount due in royalty is payable. In considering whether to include a minimum annual payment, the Board will have regard to the practice followed by mineral owners in the locality in granting mineral leases before the Town and Country Planning Act, 1947, came into operation.

Where there is a minimum annual payment, the developer will have the right at prescribed intervals to give notice that the determination is to be brought to an end (this would correspond to a "break clause" in a mineral lease). A developer who ceases operations can thus be relieved of the minimum annual payment. Where the developer decides to let the determination be brought to an end in this way, he would forfeit any amount standing to his credit under a short workings arrangement and he would have to apply for a fresh determination if later he wanted to resume operations.

The development charge will not include a separate payment corresponding to the surface rent reserved in many mining leases.

14. Scope of Determination of Development Charge.

The Board have power, under Section 72 (2) and Regulation 3 (1) of SI 1948, No. 1521, to determine charge in respect of a specified period. Where the planning permission is limited to a particular period, the determination of charge cannot run for any longer period (proviso (*a*) to Section 72 (2)). The Board's practice in cases where the permission is not so limited cannot be defined with any precision at present. A firm policy can emerge only with experience, as dormant mineral deposits are brought into production and charges are negotiated.

The Board's present view is that, whether the charge is in the form of a single capital payment or a royalty, the determination should normally relate to all the land which is the subject of the planning permission and should not be limited in time (unless the planning permission is limited or the developer so requests). They must, however, reserve the right to place a limit on the determination in cases where the charge is in the form of a royalty and the planning permission covers enough minerals to last a very long period.

In settling the period of the determination in a case where the Board impose a time limit, the Board will have regard to the length of lease that a lessor could reasonably be expected to have granted before the Act in view of the size and capacity of the undertaking.

Whether the charge is to be a capital payment or a royalty, a developer who so desires can demand that the determination should run for a specified period only (proviso (*b*) to Section 72 (2)). He can also ask that the development charge be assessed in the first instance on a smaller unit than that for which planning permission has been given; in which event the development charge assessment, if and when applied for, on the remainder of the area covered by the planning permission, would be calculated in the light of the circumstances prevailing at the time of such further assessment.

15. Procedure for Payment of Development Charge.

Capital Payments. A development charge determined as a capital sum will be payable as a single payment before the development starts. The Board consider it inappropriate to make provision for the payment of such capital sums by instalments.

Royalty Payments. These will be payable half-yearly. The Board, under the powers conferred by regulation 8 (2) of SI 1948, No. 1521, will require developers to accompany each payment by a statement of the quantity of the minerals upon which the royalty is payable. A certificate by an auditor should be furnished at a convenient date in relation to each statement; but if an auditor is not normally engaged in connection with the accounts of the undertaking, a certificate by a responsible official of the undertaking will be accepted in lieu of an auditor's certificate. It may sometimes be necessary to ask also for a plan of the workings as at a specified date. Under the same regulation the Board may examine the developer's books and accounts. All information obtained under the regulation will be treated by the Board as confidential. The Board also have power, under Section 103 (3) (*b*) of the Act, to arrange for their officers to make a survey.

Income tax should be deducted at the appropriate standard rate, subject to the completion of a Certificate of Deduction of Income Tax which will be supplied by the Board.

Where the development charge includes a royalty, there is, of course, no question of paying the charge before development starts. The Board will, therefore, require the developer, when they give him "consent to proceed", to undertake to pay the charge as and when it becomes due in accordance with the determination. In view of the need for this undertaking, the determination will be personal to the applicant, *i.e.*, it will contain a direction under Section 72 (1) (see paragraph 119 of Practice Notes). The effect is that, if before the mining operations are completed the developer sells or leases the minerals, an application must be made to the Board for the determination to be confirmed. When this happens, the new developer will be required to enter into a similar undertaking to pay.

APPENDIX TO PRACTICE NOTE: MINERALS

The following paragraphs illustrate the dividing line between the winning and working of minerals and the processing of minerals.

1.—(i) *Buildings or works, plant and machinery which are considered to be used for the winning and working of minerals:—*

Powder magazines; winding engines; haulage engines; all underground roadways, plant, machinery and buildings used normally for mining operations; pump houses; pumping plant and machinery; ventilating plant; shafts; drifts and adits; screens; washers; conveyors; stocking sheds; buildings for housing locos used in quarry; workshops for mine or quarry maintenance; compressors or generators used entirely or mainly for quarrying or mining purposes; electric power lines; compressor power lines; water pipe lines serving brine fields or quarry sites; brine pipe lines from brine field up to drying plant; extractors, heapsteads, tipplers; bunkers; crushers and grinders (other than for clay and glass making sand—see below); weigh machines on site or connected therewith by mineral railway; quarry office; dressing sheds, stone saws used for getting stone; mineral lines and sidings en route to crushing plant or main line railway junction if used entirely or mainly for the transport of raw materials; gravity separators or flotation plant in metalliferous mines; boiler plant; transformers, switch gear used in connection with the getting of the minerals. Access roads, tramways or aerial ropeways used for transport of the mineral in its raw state to the crushing plant, screens, bunkers or loading point.

(ii) *Buildings, plant and machinery which are considered to be used for the treatment or processing of minerals:—*

Kilns, drying and other sheds used in connection with the manufacture of bricks, tiles, clay pipes, refractories, sanitary ware, terracotta and similar articles; cement works and works ancillary thereto, blast furnaces, tarmac plant, plaster board works, by-product plant; concrete mixing or precast concrete works; cement tile works.

Note: Buildings, plant and machinery qualify for inclusion in (i) or (ii) above only when they are primarily used in connection with minerals. Furthermore, when buildings, plant and machinery are used partly for winning and working and partly for processing the predominant use will be used for classification purposes.

2. In some mineral industries conditions at individual undertakings vary so much that it is not possible to draw a precise line to indicate where winning and working ends and processing begins. The lists in paragraph 1 (which are not exhaustive and may be extended from time to time) will therefore constitute the basis of classification for all industries, but the following general divisions indicate broadly for some industries the point at which winning and working is considered to end:—

Barytes.—When the rough ore as got from the mine has been washed and dressed to yield barytes.

Cement.—When the raw mineral is delivered at the works.

Chalk.—When the chalk is removed from the ground and made ready for despatch from the pit.

China Clay.—When the clay leaves the pit.

Clay (including fireclay and silica).—When the mineral is tipped on to the stocking or weathering bank or transferred to the crushing or grinding plant.

Fluorspar.—When the ore has been crushed, washed, jigged and dressed.

Iron Ore.—When delivered from the crushing plant.

Igneous Rock and Sandstone.—When the stone is crushed, dressed or screened and saleable but before treatment with tar or bitumen.

Limestone.—When the stone is crushed and made ready for sale as roadstone or for use in blast furnaces, or dressed, or suitable for calcining or coating with tar or bitumen.

Salt (Hydraulically Mined).—(*a*) "Open pan" method—when delivered to bulk salt warehouse; (*b*) vacuum plant method—when delivered from the vacuum plant as "undried vacuum salt"; (*c*) for other than salt manufacture—when delivered to process works.

Sand and Ballast.—When washed, screened and crushed.

Glass making sand.—When delivered at the sand wash before washing and grading.

Slate.—When the dressed slate is ready for despatch from the quarry.

Correspondence

To the Managing Editor,
Journal of Planning Law.

Sir,

Objections to development plans

Para. 17 of the Town and Country Planning (Development Plans) Regulations, 1948, provides that after a development plan has been submitted, the Minister shall take into consideration such plan and any objection or representation received by him within a specified period; and unless he decides to cause a public local inquiry to be held he shall, before approving the plan, afford to any person who has duly made an objection an opportunity of appearing before and being heard by a person appointed for the purpose.

Obviously, a would-be objector cannot raise his objections unless he is aware that a plan has been submitted to the Minister for approval.

If an owner happens to reside or personally carry on business in the district in which the property is situate, the chances of his being unaware of the submission of a plan are, perhaps, negligible; but an owner who neither resides nor carries on business in the district may be utterly unaware of what is happening; and it is far from unlikely that he will not see or at any rate read the advertisement for which the Regulations provide.

The point is of particular importance to business concerns owning shops throughout the country.

On raising the point with a planning authority we have received the following observation:—

> "In your case and if it is of any assistance to you and you care to write to this office in say, June, 1951, I should be in a position to say on what date the plan will be submitted to the Minister, and I shall take note that an objection is likely to be made".

This suggestion goes some way towards meeting the difficulty; and we are calling attention to it in case other local authorities may feel disposed to offer assistance on similar lines.

Yours faithfully,

Blake, Lapthorn & Co.,
Solicitors and Notaries.

Portsmouth.

Notes of Cases *

Section 85: Land held on Charitable Trusts.

Girls' Public Day School Trust, Ltd. v. Minister of Town and Country Planning (December 8, 1950). This was the first appeal under s. 92 of the Town and Country Planning Act, 1947, the question being whether land was land to which s. 85 of the Act applies.

The Minister had determined under s. 92 that the appellants were not a charity, and it was submitted for the Ministry that they could not be so as they were a company which could make a profit and distribute it to their shareholders. To be within the section the constitution of the company must be such that they could not apply their land otherwise than for charitable purposes.

Roxburgh, J., affirmed the Minister's determination, on the grounds that although the Trust had not been conducted on commercial lines for many years past, it was impossible to say that on the Appointed Day the lands and buildings were held only on charitable trusts.

H. J. B.

Enforcement Notice—Prior Contravening Use

Higham v. Havant and Waterloo U. D. C. (December 14, 1950). Two pieces of land formerly used for agriculture had been used as camping sites since purchased by the claimant, Mrs. Higham, in 1931 and 1936. A resolution to prepare a scheme for the district under the Town Planning Act, 1925, had been confirmed by the Minister of Health on December 7, 1928. A licence under s. 269 of the Public Health Act, 1936, was deemed to have been granted on January 1, 1938, but no interim development permission for the change of use had been obtained.

Notice to treat was served by the local authority on June 17, 1948, and compensation accordingly fell to be assessed under s. 55 of the Act of 1947. The question, stated as a special case by the Official Arbitrator, was whether after July 1, 1948, the use as a camping site would have entailed

[*Continued at p. 63, post.*]

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* Full reports of these cases will be published in Vol. I of *Planning and Compensation Reports.*

*Notes of Planning Decisions**

Alteration and Extension of Shops—Property Ultimately Required for Widening Streets

The following is an extract from the letter of the Minister of Town and Country Planning, dated November 21, 1950, allowing an appeal against the refusal of Norwich City Council to grant planning permission for alterations and extensions to shop property at Magdalen Street, Norwich.

" It was represented on the Council's behalf that they propose to construct an inner link road which would cross Magdalen Street immediately north of the appeal premises. A portion of the site would be required for the formation of a splayed junction between the two roads. In addition, the Council propose to acquire land fronting the west side of Magdalen Street, including a strip of the appeal site, for the purposes of widening this shopping street and relieving traffic congestion.

The Minister sees no reason at this stage to question the Council's proposals to improve traffic conditions within the City. In view, however, of the magnitude and high cost of these works involving the demolition of many buildings, he is of the opinion that a considerable period of time must elapse before the new road is constructed and any effective widening of Magdalen Street is carried out. The new road proposal would not necessitate a material alteration to the structure of No. 56; and if the remainder of the shop premises were set back from the Magdalen Street frontage as suggested by the Council, it would result in the creation of a deep recess adjoining buildings of considerable architectural merit to the detriment of the commercial value of any premises erected and the character of the street. It appears to him that the proposed development would not add materially to the ultimate cost of the road works proposed by the Council, and that since these are long term proposals it would not therefore be unreasonable to permit the proposed development."

[By courtesy of Messrs. Percy Hewes & Co., Surveyors.]

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*The Managing Editor desires to express his thanks to those who have been kind enough to send to this Journal particulars of planning decisions, and hopes that he will continue to receive particulars of planning decisions which involve points of general interest.

Erection of Shop—Fire Risk to other Buildings

The Minister of Town and Country Planning has allowed an appeal against the refusal of Maidstone Borough Council to permit the erection of a shop in Pudding Lane, Maidstone, on part of the curtilage of Star House.

Before the war the site was used as an access to the Royal Star Hotel Garage, but had not been so used for eleven years and was now blocked by a gate which was usually locked. While not objecting in principle to a shop on the site, the Council thought that to close the Pudding Lane access by building would constitute a grave fire risk.

The Minister considers that the proposed development would be in keeping with the surrounding uses and that the filling in of the gap would improve the general facade of the street. As there are no planning objections and as fire prevention is a matter for powers other than those available under the Town and Country Planning Act, 1947, the Minister has decided to permit the erection of a shop in accordance with plans submitted.

[By courtesy of the Public Relations Officer, Kent County Council.]

Erection of Café—Piecemeal Development

The following is an extract from the letter of the Minister of Town and Country Planning, dated September 6, 1950, dismissing an appeal against the refusal of Portsmouth City Council to permit the erection of a catering establishment on land at the corner of Pier Road, Clarence Esplanade, Southsea.

" The Minister has carefully considered the facts of the case, and the representations made and notes that the Council desire to improve this part of the Southsea front, and that they propose to prepare a scheme for regrouping the existing kiosks and buildings in order to improve the appearance of the area. As much of the land is owned or leased by the Council, they expect to be able to implement the scheme at an early date.

The Minister can find no fault with this proposal of the Council, and is of the opinion that it would be undesirable to allow piecemeal redevelopment now which might well prejudice preparation of the improvement plan ".

[By courtesy of the Town Clerk, City of Portsmouth.]

Condition Requiring Owner to Provide Lay-by at Own Expense, Although Part of Highway.

Costs Awarded Against Local Authority.

The following is an extract from the letter of the Minister of Town and Country Planning, dated September 30, 1950, partially allowing an appeal against a condition imposed by the Thornton Cleveleys Urban District Council in granting permission for the erection of two dwelling-houses with shops on the ground floor, on land at Thornton. The condition was that the shops must be set back at least 30 feet behind the existing road boundary in order to allow for a shopping lay-by when the area concerned was, in the opinion of the local planning authority, developed as a shopping centre sufficiently to require this provision; such lay-by to be constructed at the cost of the applicant or owner to the specification, satisfaction and design of the highway authority.

" The Minister agrees that the development ought to be set back a distance of at least 30 feet from the existing road boundary. With regard to the remainder of the condition, which sought to secure provision of a lay-by at the expense of the appellant, it appears that the land which might be used for this purpose had already been dedicated as part of the highway by an agreement, made in 1927, binding the Thornton Cleveleys Urban District Council to carry out all necessary roadworks on the land. It is evident, therefore, that the appellant could not in any event be required to bear the expense of these works.

The Minister has accordingly decided to allow the appeal to the extent that he modifies the condition attached to the permission to read as follows : ' That the proposed buildings shall be set back at least 30 feet behind the existing boundary of the classified road.'

The Minister has been unable to overlook that the Thornton Cleveleys Urban District Council were on several occasions after the issue of the determination reminded by the appellant or her solicitor of the existence of the agreement mentioned above and its significance in relation to the appeal, but that in spite of this no action was taken which might have enabled him to dispense with the holding of a local inquiry. Since it was evidently unnecessary to put the appellant to the expense of presenting her case at an inquiry he has decided, after carefully weighing the circumstances, to make an award of costs in her favour."

[By courtesy of Messrs. Anderson & Pilkington, Chartered Architects, Surveyors and Valuers.]

Time Limit Condition on Use of Factory, imposed by reason of Materials of Construction

The Minister of Town and Country Planning has allowed an appeal against a time limit condition imposed by the Chislehurst and Sidcup Urban District Council in consenting to the continued use for industrial purposes of a factory extension at Ruxley Corner, Sidcup.

The Council did not object to the use of the site for industrial purposes, but considered that the material of construction—steel framing with corrugated asbestos roof and walls—was insufficiently permanent. The Minister has stated that he does not think that the imposition of a time limit is reasonable in the circumstances.

[By courtesy of the Public Relations Officer, Kent County Council.]

Three-Year Permission for Caravan Camp, Pending Development Plan

The Minister of Town and Country Planning has conditionally allowed an appeal against the refusal of Herne Bay Urban District Council to consent to the use as a caravan camp of land at Herne Bay.

The Minister sees no serious objection to the temporary use of part of the land as a caravan camp pending consideration of the proper permanent use of the land under the development plan. He therefore allows that use for a period of three years subject to the lay-out being agreed with the Council or himself on appeal.

[By courtesy of the Public Relations Officer, Kent County Council.]

Three-Year Permission for Hut for Storage of Materials and Workshop, Pending Development Plan

The following is an extract from the letter of the Minister of Town and Country Planning, dated November 20, 1950, conditionally allowing an appeal against the refusal of Amesbury Rural District Council to permit the erection of a timber shed, to be used as a photographic store place and workshop, on a plot of land at Amesbury.

"The proposed use would be at variance with the intended provisions of the Development Plan but would not, in the Minister's opinion, be open to objection on amenity grounds at the present time. It is understood that the land is unlikely to be required for housing for some years to come, and the Minister has decided to allow the appeal to the extent that he grants permission for the erection and use of the proposed hut as a store place for photographic materials and as a workshop for photographic framing for a limited period of three years from the date of this letter, subject to removal of the building and restoration of the land on the expiration of the permission."

[By courtesy of the County Planning Officer of the Wiltshire County Council.]

Notes of Cases

(*Continued from p.* 58)

liability to service of an enforcement notice under s. 75 of the Act of 1947, and whether this should be taken into account in assessing the compensation.

The Divisional Court of the K. B. D. (Lord Goddard, C.J., Hilbery and Parker, JJ.) rejected the contention that after July 1, 1948, under the provisions of s. 23 as applied by s. 75, enforcement action could not have been taken because more than four years had elapsed since the change of use had taken place. S. 75 had not been in force at the date of the notice to treat, but the arbitrator was not debarred from taking into consideration the possibility of a notice under that section being served after July 1, 1948, and determining the difficult question of the extent to which the value of the land was thereby diminished.

H. J. B.

Practical Points

All questions for consideration should be addressed to "The Managing Editor, The Journal of Planning Law, 3 Chancery Lane, London, W.C.2." The questions of subscribers only are answerable in the Journal. All questions should be submitted in duplicate. The Publishers cannot accept any responsibility for the correctness of replies.

276. *Development—Use Classes Order—boot repair business.*

Clients of ours are proposing to use for the purpose of a boot repair business a building in a shopping area of which the "existing use" was "empty shop" and which was formerly used for retail trade.

In view of the wide interpretation of the term "shop" given by the above Order, which includes as a shop a building used for the purpose of a hairdresser or for any other purpose appropriate to a shopping area, we are of opinion that the proposed use will constitute use as a "shop". The premises will be used for the sale of boot laces, polish, rubber soles and the like accessories, and repairs will be carried on upon the premises.

We feel, however, that the establishment of a boot repair business, whilst being appropriate to the shopping area of one district, might be thought to be very inappropriate in a shopping area of a different class, and that the matter must be one which is open to doubt. [W. & I.]

ANSWER

The wording of the Order is "appropriate to *a* shopping area", and one is not concerned to consider whether the proposed use is appropriate to *all* shopping areas or to a particular shopping area. Using words in their ordinary sense a use is appropriate to *a* shopping area if it would not be out of place in the average shopping area.

Boot repair *shops* (that is the common term) are a very common feature of suburban shopping areas, and the use is certainly not one which should be relegated to an industrial zone.

Personally, I do not feel any doubt that the ordinary boot repair shop is within the definition of "shop". [W. A. L.]

277. *Development—Use Classes Order—boot repair business.*

The ground floor of premises in this borough is at present vacant, but was last used as an estate agent's office. The upper floor is used as a residential flat. An intending purchaser wishes to use the ground floor premises for the purpose of carrying out boot and shoe repairs on the premises, and also the minor incidental retail sales usually associated with such establishments.

The definition of " shop " in art. 2 (2) of the Town and Country Planning (Use Classes) Order, 1950, includes a building used for any purpose appropriate to a shopping area. No mention is made of the particular type of shopping area to be chosen as the area to which the building in question is or is not appropriate, and there is obviously a very wide variety of such areas differing greatly in amenity. Moreover, it would appear that once a particular business is held to be appropriate to a shopping area, it must consistently be held to be approriate to all shopping areas whatever the standard of amenity prevailing.

(1) Does the proposed use of the premises mentioned above constitute the premises a " shop " within the Town and Country Planning (Use Classes) Order, 1950?

(2) Alternatively, does the proposed use bring the premises within Class III of the Schedule to the Order?

(3) Did the user of the premises as an estate agent's office constitute the premises a " shop " or an " office " within the meaning of the Order?

(4) If the user as an estate agent's office and the proposed use for boot and shoe repairs are not both thought to be within Class I, is it considered that the proposed use constitutes a material change of use? [T. F. S.]

ANSWER

(1) Yes.

(2) Yes, the building will clearly be within the definition of " industrial building ". That does not mean that the premises could thereafter be switched over to any other industrial use, for although that might not be a change of use within Class III, it would be a change in the Class I use unless the new industrial use was also suitable to a shopping area.

(3) Shop. See [1950] J. P. L. 668.

(4) Does not arise. [W. A. L.]

278. *Development charge—position of lessee.*

The lessee of a shop having about seventeen years unexpired, desires to carry out certain extensions to the premises, to which he has obtained his landlord's consent.

The extensions exceed the tolerance allowed by the Act and development charge will be payable. Is there power under s. 72 to require the Board to determine the charge in relation to the period of the tenant's lease, *i.e.*, is some reduction in the charge made in view of the fact that the development will not enure for the benefit of the tenant when the lease expires? If we are right in this assumption, what is the position so far as the landlord is concerned at the end of the term, as presumably he will get the benefit of the extensions. Is it necessary to pay a further development charge on the lease falling in?

There is no question of the landlord agreeing to pay any part of the development charge himself, and the tenant is quite agreeable to discharge the amount, but if he can limit the charge to the period of his tenancy he wishes to do so. [G. L. B. & Co.]

Answer

The charge for operations cannot be paid for a limited term, s. 72 (2) (*b*) applying only to uses.

I have heard it suggested that the charge could be included as part of the cost of the works carried out under Part I of the Landlord and Tenant Act, 1927, but the charge is a charge for permission to do the works irrespective of cost, and not part of the cost of the works. Although words in an Act are sometimes wide enough to include things unknown when the measure was drafted, it would be difficult to include in cost of works a charge which is not related to what the works cost, but to their effect on the value of the property. [W. A. L.]

279. *Development charge—assignment of benefit on conveyance of the land.*

In 1949 A purchased a freehold plot of land known as White-acre and received the necessary planning permission and building licence to erect a bungalow thereon. The Central Land Board assessed the development charge payable at £155 and this sum was duly remitted to the Board. Owing to a change in circumstances, A finds it impossible to proceed with his proposed development and has agreed to sell the land to X at a sum to include the £155 development charge paid by

A, and to assign to X the benefit of the development charge so paid. The solicitors acting on behalf of X have, in the draft conveyance, inserted a specific assignment of the benefit of the development charge paid by A, in wording similar to that used where the benefit of the right to compensation under the Town and Country Planning Act in the global sum is assigned, and also have inserted a power of attorney.

It is appreciated that the development by X may attract a greater or less development charge than that paid by A, depending upon the type of building to be erected by X, and in these circumstances we are of the opinion that the clauses inserted by the solicitors to X should be qualified in some way to avoid the same being construed as amounting to a warranty that the proposed development by X will not exceed the sum of £155.

Your advice on the matter would be appreciated and, also, can you supply a precedent to meet the facts of the case?

[A. H. & P.]

Answer

As my inquirer obviously does, I feel that these clauses are misconceived; the benefit of the development charge having been paid runs with the land in respect of the particular development in question, and it cannot be the subject of a separate assignment; the benefit of the claim on the global sum is *by the Act* declared to be transmissible as if it were personalty, and the two cases are not similar. Clauses in the conveyance set out in [1949] J. P. L. 513 could be adapted for the present purpose, of which the most important (from the point of view of the purchaser) are the recitals.

[J. F. G.]

280. *Development charge—camping.*

It appears that under the Town and Country Planning (Development Charge Exemptions) Regulations, 1950, the use of any land for camping purposes, by the placing thereon of any caravan or tent, is exempt from development charge. Would this exemption still apply in either of the following situations :—

(a) If a large site was used commercially for this purpose and a fee paid to the owner of the land by the occupiers of each caravan?

(b) If a site was laid out as a properly equipped camping ground and water and lavatory facilities provided. In this event would development of this nature attract a charge? [H. L. & E.]

ANSWER

(a) Yes.

(b) No exemption from development charge is afforded in so far as building or engineering operations within the meaning of the Act are carried out. Only use for camping is exempt. [R. P. C.]

281. *Near-ripe land—development by subsidiary of company-owner.*

A land development limited company owns a freehold estate which was partly developed with good class residences prior to the war. The actual building operations were carried out by a wholly owned subsidiary company formed for the specific purpose; the parent company was never a builder as such.

(a) Does the land development company qualify for a near-ripe ration under S.1A/N.R. (Revised), para. 2 (*b*) (i), as a " similar type of building firm " ?

(b) Does it qualify for the ration under para. 2 (*b*) (ii) under the definition of " Certain developers of housing . . . estates "? [L.S. & Co.]

ANSWER

It might be possible to contend that the land was held by company A (parent company) for the benefit of company B (subsidiary company) so that company B may be allowed a ration under para. 2 (*c*) of S.1A/N.R. (Revised).

Apparently the parent company was not a building firm and could not, therefore, be regarded as a " similar type of building firm " within para. 2 (*b*) (i).

Whether the parent company complies with para. 2 (*b*) (ii) is a question of fact. Did they assume full practical and financial responsibility for the construction of the buildings on their land and for the subsequent sale or letting, or was the purpose of the subsidiary building company that the parent company should not have the responsibility? [W. A. L.]

THE JOURNAL of PLANNING LAW

Published by
SWEET & MAXWELL, LIMITED
2 & 3 CHANCERY LANE, W.C.2

On the First of Every Month
Subscription: £1 10s. 0d.

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"Planning Law" Notes

A further concession in regard to the operation of the Town and Country Planning Act, 1947 (and of the Scottish Act)—this time in relation to the calculation of certain claims on the £300 million fund—is made in a reply by the Chancellor of the Exchequer to a Parliamentary question. Those who did not make a claim in cases covered by the concession are advised to notify the Central Land Board so that their cases may receive consideration in due course. See *post*, p. 98.

The Chairman of the National Parks Commission has now signed the Designation Order for the Peak District National Park—the first of its kind. There now follows the period during which representations may be made to the Minister, who has the final word as to what the boundaries of the Park shall be.

A development value claim of £4,193 in respect of the Brooklands estate of 27 acres at Sutton-on-Sea, Lincolnshire, is reported to have been sold by auction for £220: *Daily Telegraph*, January 19, 1951, at p. 5.

The Expiring Laws Continuance Act, 1950, has extended the life of the Licensing Planning (Temporary Provisions) Acts, 1945 and 1946, until March 31, 1952.

The Central Land Board report that they have made compulsory purchase orders in respect of two plots of land, one in Cumberland and one in Gloucester—the first made by the Board in respect of land in these counties. A further order has been made in respect of 12 acres of gravel-bearing land near Denbigh.

The difficulty experienced by landowners and their legal advisers in keeping abreast of the progress of development plans in cases where they do not reside or carry on business in the area concerned has been pointed out in a letter printed at p. 57, *ante*. This difficulty has been experienced by other professional advisers and the matter has been taken up with the Ministry of Town and Country Planning who have readily agreed to furnish lists of local planning authorities who have submitted development plans. The first list is printed on p. 97, *post*, and will be added to from time to time as necessary.

Attention is drawn to the extremely important decision in *R.* v. *Northumberland Compensation Appeal Tribunal, ex p. Shaw*, noted at p. 106, *post*, which opens up a prospect of a re-establishment of control by the High Court of the legal decisions of inferior Tribunals.

The Ministry of Town and Country Planning have moved their headquarters from St. James's Square to 23 Savile Row, London, W.1. The telephone number is Regent 8411.

It has been announced that certain functions of the Minister of Health are to be transferred to the Minister of Town and Country Planning. The latter Minister is to be renamed the Minister of Local Government and Planning and will be responsible for the following:—

1. Housing and new towns.
2. Environmental services, for example, water and sewerage.
3. Planning and the control of the use of land.
4. General oversight of the work of local government.
5. Financial responsibility towards local authorities.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Journal. They should be sent to the Managing Editor, *Journal of Planning Law*, 3 Chancery Lane, London, W.C.2. *Every attempt will be made to return drafts or unsuitable copy but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

Mortgagees and Development Value Payments

By Harold Potter, LL.D., Barrister-at-Law

Where property, in respect of which there is a right to payment for loss of development value (in this article called a " development value payment ") was subject to a mortgage on July 1, 1948, the Town and Country Planning Act, 1947, s. 58 (4), makes special provision. It provides that the Treasury Scheme *may* apply s. 24 of the War Damage Act, 1943, and the Central Land Board have announced that the Treasury *will* make provision for the protection of the mortgagee on the basis of that Act: [1949] J. P. L. 40. The Treasury scheme has not yet been announced, but all the application forms for claims for loss of development value contained an inquiry concerning the existence of a mortgage (see, *e.g.*, Form S.1, para. 5). Where no claim was made by either the mortgagor or mortgagee it appears that no claim could now be made. Where a claim was made it may be assumed (and is assumed for the purposes of this article) that the Central Land Board have notice of the existence of the mortgage.

In the absence of the Treasury Scheme the position of the mortgagee cannot be positively stated, but on the basis of the announcement it may be assumed that the essential character of the provisions of the War Damage Act, 1943, will be preserved. Under s. 24 of that Act the right to a value payment and interest thereon vested in the mortgagee of the hereditament in respect of which it was payable. The mortgagee is liable to account as if the sum so paid had been proceeds of a sale made in pursuance of a power of sale. There is further provision that if at the date of payment the mortgage had been paid off the payment should be made as if the property had not been subject to the mortgage. Analogous provisions were made in respect of two or more mortgages, and the whole subsection was subject to contrary agreement between the parties.

Assuming that s. 24 of the Act of 1943 is applied by the Treasury Scheme to the right to receive a development value payment, then the following propositions would seem to follow:

1. The right to the development value payment has vested in the mortgagee, but this is subject to statutory divesting analogous to an executory limitation in favour of the mortgagor in the event of the mortgage debt and interest thereon being paid off before the development value payment is made. Whether or not such divesting operates as a transfer at law of the right (unknown at Common Law in the case of personalty except in the case of an executory bequest) must depend upon the form of the scheme.
2. The right to the development value payment vests in the mortgagee subject to an obligation to account for it as specified by statute. The mortgagee may be regarded as holding on an express or, more probably, an implied trust to apply the payment when received in discharge of the mortgage debt and interest thereon and to pay the balance, if any, to the mortgagor or to the second mortgagee as the case may be (see Law of Property Act, 1925, s. 105).
3. The right to development value payment is something quite separate from the right to receive the mortgage debt and has become an independent property right not forming part of the security as such.
4. The right to the development value payment being vested in the mortgagee and being transmissible as if it were personal property (see s. 64 of the Town and Country Planning Act, 1947) the mortgagee has power to dispose of it as a chose in action.

In effect, the person beneficially entitled to the development value payment is the mortgagor, but so long as the mortgage debt remains owing, the person to whom the debt is owed is entitled to receive the payment, in priority to the mortgagor, in reduction or discharge of the mortgage debt and interest thereon. It will be seen, therefore, that it is highly desirable to avoid the complications which must arise if, while any part of the mortgage debt is owing, the right to the development value payment is allowed to vest in any person other than the person entitled to payment of the mortgage debt.

Realisation of Security.

Where the mortgagee exercises his statutory power of sale two situations must be contemplated: first where the price obtained on the sale irrespective of the right to payment in respect of development value exceeds the principal and interest payable under the mortgage and secondly where it does not.

In the first case, under s. 105 of the Law of Property Act, 1925, the mortgage debt, together with all interest thereon, is discharged and the effect of s. 24 of the War Damage Act, 1943, if applied by the Treasury Scheme, is that the right to the development value payment vests in the mortgagor. It would obviously be wrong for the mortgagee to transfer the right to the purchaser. In such a case, it is submitted, notice should be given to the Central Land Board of the discharge of the mortgage.

In the second case—where the proceeds of sale of the mortgaged property are not sufficient to discharge the mortgage debt and interest—the mortgagor remains liable on his covenant to pay the balance of principal and interest. It follows that the mortgagee, in whom the right to the development value payment is vested, continues to be under his statutory obligation to apply the payment when received in discharge of such balance and to pay anything left over to the mortgagor, or as the case may be, to the second mortgagee. He could not relieve himself from this obligation merely by transferring the right to the development value payment to the purchaser of the mortgaged property or to any other person. The best he could do would be to obtain from the transferee an indemnity against liability. The purchaser of the mortgaged property, for his part, would not, by taking a transfer of the right to the development value payment, obtain any benefit therefrom. He would not obtain any better rights than the transferor and could, it is submitted, be compelled, at the suit of the mortgagor or of a second mortgagee, to apply the payment in accordance with the Treasury Scheme. This is a natural corollary to the fact that a purchaser from the mortgagee is not entitled to the mortgage debt but to the land freed and discharged from it.

It seems clear therefore that in the second case also the right to the development value payment should not be assigned without, at any rate, the mortgagor being a party to the transaction.

Death of the Mortgagee.

It is, at best, doubtful whether a specific bequest of the mortgage without mention of the right to the development value payment would be held to include it. It is therefore desirable to ensure that the right to receive the payment goes with the beneficial interest in the mortgage. A form of bequest is given below. Where the bequest has already been made there should be a codicil.

Transfer of Mortgage.

Upon a transfer of a mortgage it is imperative that the right to the development value payment be transferred. A form of assignment is given below. If the right were left with the quondam mortgagee it would probably be his duty to ascertain the state of accounts between the mortgagor and the transferee of the mortgage before applying the payment in accordance with his obligation—a duty which might be impossible to fulfil.

Conclusions.

We, therefore, conclude that in the present state of affairs the following courses should be adopted:—

(a) do not assign the right to payment on realisation of the security;

(b) specifically bequeath the right to the development value payment together with a bequest of the mortgage debt;

(c) assign the right to payment on any transfer of mortgage.

From a purely conveyancing point of view any assignment of the right to the development value payment should not be an assignment as such. The assignee can scarcely become entitled to the payment as beneficial owner because he takes the right which a mortgagee would have, namely, to apply the payment as directed under the Treasury Scheme and made under and by virtue of the Act. In like manner he will only covenant for title as trustee because he is not making any absolute assignment as beneficial owner and the property does not form part of his security.

In conclusion we should observe that these observations are by way of interim suggestions based upon the reference in the Act of 1947 to the War Damage Act, 1943, and to the announcement of the Central Land Board. When the Treasury Scheme is announced some modifications of our observations may become necessary, but it is difficult to see how the general conclusions will be falsified provided the general scheme of the War Damage Act, 1943, is followed.

PRECEDENTS

Bequest of Claim with Variation for Inclusion in Codicil.

I hereby bequeath to A. B. the rights now vested in me in respect of a claim for loss of value under the Town and Country Planning Act, 1947, in respect of the property comprised in the mortgage dated etc. and made etc. [and bequeathed by my will dated the —— day of ——] to apply any payment made under such claim in accordance with the scheme to be prescribed under or by virtue of the said Act.

Assignment of the Claim on Transfer of Mortgage.

For the consideration aforesaid the Mortgagee as Trustee hereby assigns unto the Transferee ALL the right to or interest in or claim to any payment made or stock issued in respect of depreciation in value under or by virtue of the Town and Country Planning Act, 1947, of and in the property subject to the security hereby transferred and any interest or dividend payable in respect thereof TO HOLD the same unto the Transferee to pay and apply the same in accordance with the scheme to be prescribed under or by virtue of the said Act.

*Planning and the Solicitor**

By CHARLES GREENWOOD, Solicitor

III.—House Alterations and Development Charges

Practising solicitors with a tendency to apoplexy should delegate their clients' planning problems to the most fish-like member of their staff, as in many cases consideration of such problems tends to cause a sudden rise in blood pressure. This is particularly so when one comes to advise on the circumstances in which a development charge may be payable, and I have not yet evolved a satisfactory formula (in dignified language) for the explanation to puzzled clients of the following apparent anomaly :—Why is it that in many cases where they will receive no compensation from the global fund because their right to develop a particular property is alleged by the State to be valueless, they must none the less pay a charge to the State when they seek the right to develop the very same property?

Many of my readers will have had brought to their offices by houseowners form C.V. 121 in which the District Valuer solemnly alleges that the house to which it refers has no development value.

If, however, you reply to the District Valuer and say "very well, if this house cannot be made the subject of a claim for compensation for loss of development rights, will you undertake that no development charge shall be asked for if the owner wishes to build on an extra wing to cope with his increased family?"—you will only get an evasive answer to the effect that no assurance on this point can be given. This, of course, is the old story of "heads I win, tails you lose" so we had better see what financial joy is likely to be the lot of the house owner seeking to deal with what he fondly thought was his own property.

You may remember that in a previous article ([1950] J. P. L. 865–6) we found that certain changes in use and alterations in structure were not to be deemed to comprise development or create liability to development charge. This included changes in use which were not "material", structural alterations affecting only the interior of the house, and work which did not materially affect the exterior of the house. (Incidentally, knocking down a house has been declared by the Minister of Town and Country Planning not to amount to development,[1] but what the Minister of Health would think in such a case is not revealed !)

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* Previous articles under this heading appeared at [1950] J. P. L. 736, 865.

On the other hand, changes in use such as the conversion of even part of a house to a shop or other commercial purposes will create a liability to charge except where not more than 200 sq. feet, in the aggregate, of a dwelling-house are used as a shop and such use is combined with the residential use of the dwelling-house—thus the little confectioner or tobacconist is saved if he lives on the job (Town and Country Planning (Development Charge Exemptions) Regulations, 1950 (SI 1950, No. 1233)).

The amount of the charge will depend on the views of the District Valuer and the Central Land Board as to what represents the difference in value between the house as it stands and the house plus the right to make the desired change of use. I know that many clients expect their solicitors to conduct the necessary negotiations with the District Valuer but in any matter of substance I always try to obtain authority to seek the help of one of our friends (whether in or out of Barsetshire) whose profession it is to study these subtle distinctions in value. In the meantime, we must continue to pray with the Law Society and other professional bodies for a right of appeal to the Lands Tribunal against arbitrary assessments by civil servants.

Turning to the familiar case of the owner of a large house who wants to turn it into flats, he can quite safely be told that whilst planning permission is required, he will not have to pay any development charge, and indeed, the Exemptions Regulations to which we have just referred, extend to the conversion into any number of separate dwelling-houses of not more than three adjacent buildings, each of which was in use as a dwelling-house on the appointed day, or if then under requisition, was in use for residential purposes when first taken over by the Government Department concerned. But why stop at three adjacent buildings ?

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[1] See article at [1949] J. P. L. 247, and Ministry Circular No. 67, [1949] J. P. L. 257.

Coming now to the question of additions to the house as such, not involving any change of use, we find that the new Exemptions Regulations have stretched the old exception of 10 per cent. or 1,750 cubic feet, to 10 per cent., or 7,500 cubic feet, whichever is the greater, and a similar concession applies to the rebuilding of a house demolished since January 7, 1937, which, blown out if necessary by an extra 7,500 cubic feet, can be re-erected without charge. For this relief, much thanks.

Then we have the burning question of summer houses, tool sheds, dove-cotes, hen houses and, of course, garages. By and large, you can advise the erection of any multitude of these miscellaneous buildings without even planning permission so long as their heads are not reared more than 10ft. from the ground—with an extra 2ft. for a ridged building. But beware of cases of clients with horses or cars, as such plutocrats call for special attention in these days when most of us can only afford to walk. A stable or a garage can only be erected after planning permission has been obtained *unless* it falls within the curtilage of the dwelling-house to which it is related and does not exceed the cubic content of the house by more than 1,750 cubic feet or one tenth whichever is the greater, subject to a maximum of 4,000 cubic feet and conditions which prevent its height exceeding that of the house (!) or its projecting beyond the front building line. No development charge will be payable on such a garage or stable, nor indeed, just to confuse you, where its size does not exceed 10 per cent. of the cubic capacity of the house or 7,500 cubic feet, whichever is the greater, always assuming, of course, that this tolerance has not already been made use of. I hope this makes everything quite clear !

These notes are being written on New Year's Eve, and as I look forward to the tremendous realities which confront us in 1951, I begin to wonder if we have not contrived, as a country, to erect a somewhat over complicated and artificial structure in which to live in these grim days. What a pity it is that some zealous Minister cannot by Statutory Instrument prescribe peace for the world ! Even then, I expect some fanatic would seek to apply by certiorari to quash.

Planning Permission and "Dead Ripe" Certificates

An Analysis of Certain Appeal Decisions *

By T. A. Blanco White, Barrister-at-Law

There have been a considerable number of planning appeal decisions dealing with applications for planning permission of which the main or only object was to secure a " dead ripe " certificate under s. 80 of the Town and Country Planning Act, 1947. The primary purpose of this article is to explain the principles upon which these decisions seem to have been based. For this purpose, however, it is convenient to consider two rather broader questions, both of which tend to be involved in the " Section 80 " cases. The first question is to what extent it is relevant to consider hardship to the applicant, when deciding upon an application for planning permission, and the second to what extent it is relevant that the local planning authority want the land themselves.

General principles.

The fundamental principle, upon which a local planning authority are required to act in giving or refusing planning permission is that their discretion to give or refuse permission is given them purely for planning purposes, and must therefore be exercised only upon grounds related to planning.[1] This principle has been applied by the High Court in a case under the Public Health Act, 1936—*Pilling* v. *Abergele U. D. C.* (1949), 1 P. & C. R. 42.

All, or almost all, of the decisions we have to consider may be treated as applications of this principle, although like most general principles it is apt to be rather difficult to apply in particular cases.

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* The references given in the footnotes hereto are all to reported appeal decisions of the Minister of Town and Country Planning. Decisions reported in the Ministry " Bulletins " are cited by number; other references relate to the " Notes of Appeal Decisions " published in this Journal.

[1] See, *e.g.*, [1950] 287; [1950] 444.

Hardship to the applicant.

The question of the relevance of hardship (*i.e.*, the hardship that refusal would cause to the applicant) is a rather troublesome one. On the one hand, it is obvious that no Minister could make a habit of stating that he entirely disregarded hardship; while on the other hand, if too much weight were given to questions of hardship rational planning would become impossible: every refusal must prejudice the applicant to some extent, and most permissions prejudice other people to some extent. On the whole, however, and allowing for a little reading between the lines of the published decisions (and of some unpublished ones too), the position may probably be summed up as follows.

1. It is always relevant to consider the extent to which, in the sort of case concerned, refusal of permission must necessarily prejudice the applicant.

Thus special consideration ought to be given to cases where the applicant wants to rebuild his own war-damaged house.[2] Similarly, in cases where it is proposed to give permission for industrial development for a limited term only, the effect of the limitation upon the financial prospects of the development must be considered.[3] It is indeed arguable that the mere fact that financial loss will be caused to a commercial concern is always a matter planners must consider, since it is important not to "undermine the economy" of industry.[4]

A borderline case, belonging perhaps almost to the next head, is that of the hardship caused to an owner of bomb-damaged premises by a refusal that will result in the conversion of a cost-of-works payment for war damage into a value payment.[5]

2. Where there are alternative ways of operating the machinery of planning control, it should be so operated as not to deprive the applicant of a right to compensation given by Parliament.

Thus a local planning authority which changes its mind should not take advantage of a technicality to deprive a developer of compensation for abortive expenditure.[6] They often do, however, and usually get away with it.

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[2] I/1.
[3] See, *e.g.*, IV/3.
[4] VIII/2.
[5] I/1.
[6] [1949] 623.

3. It is a good ground for giving exceptional treatment to an application, that the applicant has exceptional requirements for which the local plan makes inadequate provision: or in other words, that he is someone who ought to be "specially planned for".

Thus a private applicant with special reasons for living in a particular neighbourhood, health reasons,[7] or long association with the district,[8] may be granted permission where others would not. So also, irregular industrial use by a firm in a "key industry" tends to receive special treatment.[9]

But considerations of this sort do not justify a claim for permission to develop a particular site, if alternative sites are available where the development would not be objectionable.[1] In the same way, permission to continue an objectionable industrial use on the ground of its importance will be limited to the period needed for the finding of alternative accommodation.

4. Hardship that is purely personal to the applicant is of little or no weight,[2] especially if it is his own fault.[3]

There is of course a fundamental difficulty in any "hardship" case: that of deciding how to balance financial loss to the applicant against ordinary planning considerations. In cases where the basis of the objection is that the proposed development would add to the cost of carrying through the local plan (see below), no doubt some sort of balance could be struck.

Development by local authorities.

It is clearly established that the local planning authority ought not to refuse an application for planning permission merely because they want the land themselves.

Thus where the authority propose to develop certain land, and someone else asks for permission to carry out on that land a development falling into the same category (for planning purposes) as the development they themselves intend, they ought to give the permission.[4] If the development for which permission is asked is objectionable in detail, permission ought to be given subject to necessary modifications.[5]

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[7] [1950] 187.
[8] [1950] 594.
[9] [1950] 593, 775.
[1] II/13.
[2] [1950] 444, 445.
[3] [1950] 445.
[4] [1950] 290.

This sort of case usually arises where the authority want the land for housing.[6]

The position is rather different where the authority wants the land for a different development from that for which permission is sought. On the one hand, it is always a good reason for refusing permission that the land should upon planning grounds be reserved for some other use.[7] On the other hand, it is not a good ground for refusal that the authority have extraneous reasons for reserving the land for some other use. Thus the choice between the use for which the local authority want a piece of land, and the use for which someone else asks permission, must be decided purely in accordance with the answer to this question: Are there or are there not sufficient planning grounds for saying that this particular piece of land ought to be used as the authority want to use it, and not as the applicant suggests? If not, permission should be given[8]: even though the land may be just as suitable for the authority's proposed use as for the other. It has even been held that permission for another development should have been given, merely because there were alternative sites open to the authority[1]; but this seems possibly a little strange, if one considers the case of simultaneous applications, by the owners of all the possible sites, for permission for some other development.

Areas of comprehensive development.

It is in particular a good ground for refusing permission for small-scale development, that the area concerned ought to be developed or redeveloped as a whole,[2] whether or not the local planning authority themselves want to do the developing.[3] This objection loses importance, naturally, as the comprehensive development concerned recedes into the far future.[4] Thus, although it may be a good objection that a proposed development would "prejudice an eventual redevelopment scheme",[5] where the objection is merely that redevelopment will be made more costly it is necessary to consider carefully how far ahead this cost will be incurred—as well as the amount of the additional cost relatively to the total cost of the scheme.[6]

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[5] [1950] 371.

[6] Another example is [1950] 287.

[7] [1950] 847. An excellent example is [1950] 598.

[8] [1950] 376.

[1] [1950] 371.

[2] II/1, VI/2.

[3] In [1950] 129 they did.

[4] See *e.g.*, I/13; III/1; [1950] 285.

Relevance of motive.

It seems clear that it is irrelevant whether the applicant really wants to carry out the proposed development or not. Thus an application for permission will be taken seriously notwithstanding that its sole purpose is to obtain a "dead ripe" certificate[7]; or that the land concerned is the subject of a compulsory purchase order which has already been confirmed before the appeal is decided.[8] An extreme case of this involved a piece of land whose owner, far from really intending to develop it in accordance with the permission he sought, was negotiating with the local planning authority for its sale to them for use for other purposes. The Minister, it seems, allowed an appeal, against refusal of permission, on the ground that the land was unsuitable for the use to which the authority proposed to put it.[9]

It would seem wrong to suppose, however, that the applicant's motives are always irrelevant: it would seem to be an additional ground for giving permission, where planning considerations do not make it wrong to do so, that the applicant wants to protect some pecuniary right or obtain some pecuniary benefit.[1]

The proper course to be taken by a local planning authority who wish to acquire land compulsorily, but are met by an application for permission for some other type of development on the land concerned, is now clear. They must forget entirely their own connection with the land, treating the case almost as if there were two applications for development: one from the actual applicant, one from a notional applicant wanting to develop the land as they want to develop it—the actual applicant being deemed to have got in first. If then they can make out a good case, on pure planning grounds, for turning down the actual applicant, they are entitled to do so. Otherwise, not.

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[5] [1950] 189; [1951] 60.

[6] Cf. IV/5 ("comparatively insignificant"), [1951] 59 ("not materially"), II/6, VII/6; with IV/6 (cost increased "appreciably"), III/3.

[7] [1950] 287, 288.

[8] [1950] 288, 371.

[9] [1949] 698.

[1] As, for instance, the additional right to compensation resulting from grant of a "dead ripe" certificate. See also para. 2 under "hardship" above.

The case of the Norwich Radial Road.

There is one decision that calls perhaps for separate treatment : that of the (refused) application to develop on the line of the proposed Norwich Radial Road.[2] This may, of course, be regarded simply as an example of a piece of land that had on planning grounds to be reserved for some other use: to wit, making into the road. It may be felt, however, that if a similar refusal had been given on the ground of an objection involving a mere local authority, and not the Minister of Transport, the appeal would have been allowed on the ground that there were other possible sites for the road. Perhaps, therefore, this case illustrates another rule : that trunk roads are sacrosanct. Alternatively, one may guess at a broader principle : that the Minister will always have regard to what may be termed " the comity of Ministries ", and will not usually prejudice the schemes of other Departments.[3]

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[2] [1950] 897.

[3] Cf. [1950] 127 with [1950] 698.

More Miscellaneous Comments

By W. A. Leach, F.R.I.C.S.

Special Purchasers

Under r. 3 of s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919, the special suitability or adaptability of the land for any purpose is not to be taken into account in assessing compensation if that purpose is a purpose to which the land could be applied only in pursuance of statutory powers or for which there is no market apart from the special needs of a particular purchaser or requirements of a public authority.

" Special adaptability " was interpreted in *Re Lucas and Chesterfield Gas and Water Board*, [1909] 1 K. B. 16, as meaning the existence of certain advantages present or future by which the land in question has a special value in a particular limited market. Rule 3 does not exclude special adaptability outright, but only where the limited market narrows down to the specified extent.

So far as private purchasers are concerned, special suitability or adaptability is not to be excluded from a compulsory purchase valuation unless for a purpose for which there is *no* market apart from *a* particular purchaser having a special need of the land for that purpose.

The " purpose " is that for which the physical *land* (not the interest in land) is required and for which the land is specially suitable or adaptable (see *Pointe Gourde, etc., Transport Co.* v. *Sub-Intendent of Crown Lands*, [1947] A. C. 565): this would seem to mean the purpose for which the land is to be utilised, in other words, a " development " within the 1947 Act. Rule 3 will, therefore, not apply to any purpose if there is more than one possible purchaser who might desire to acquire the land in order to " develop " it or utilise it in the particular way. Thus the higher price which a tenant might be willing to pay for the freehold interest, or, more generally, which the owner of one interest might be willing to pay for another interest in the same land, whether to secure his tenure or his goodwill, or to be able to offer the freehold with vacant possession, is not a purpose within the rule and not to be excluded from the open market value under r. 2, " open market value " having been defined in *Inland Revenue* v. *Clay and Buchanan*, [1914] 3 K. B. 466, as meaning "such amount as the land might be expected to realise if offered under conditions enabling every person desirous of purchasing to come in and make an offer".

Nevertheless the vendor is to be regarded as a willing seller (r. 2), so that he would be tempted by any overbid giving a reasonable division of the special value which the purchaser can realise. (See paras. 37, 39, of Practice Notes, First Series). Whether such an overbid would be made depends on the class of property and the circumstances at the time. The rights of the tenant under the Landlord and Tenant Act, 1927, for example, might in some cases be an important factor, for although it was held in *Ex p. Nadin* (1848), 17 L. J. Ch. 421, that the likelihood of a lessee obtaining a renewal must be disregarded, the statutory rights are probably another matter. This is especially important in relation to the freehold interest where the effect of the 1927 Act may be to modify the value which a purchaser would place on the reversionary interest in the premises in the absence of that Act.

A second type of case in which r. 3 may be involved is where an owner would make an overbid to secure an adjoining property, *e.g.*, for purposes of expansion. That was the issue in *Inland Revenue* v. *Clay and Buchanan*, *supra*, and it was held that such an overbid could *not* be excluded from the open market value. Rule 3 probably owes its inception, in part, to that decision, but even were the overbid admissible, it would only be such as might be made to a willing seller (r. 2), and would probably be substantially less than the full value of the special qualities of the land to the man who can make use of them.

The phraseology of the rule is not completely clear. If A desires a plot of land for extending his factory and B desires it for erecting an independent factory, does A require the land for a different purpose from B? Both require it for the erection of a factory building, and although it may have a special suitability for the extension of A's factory, and A may have a special need of the land, it is difficult to say that he requires it for a different *purpose* from B. A somewhat different mode of development does not, it is suggested, amount to a different purpose. Indeed, even the mode of development might be exactly the same and the only difference that A would in future occupy two adjoining factories. The fact that the land has a special value to A is immaterial if A and B require it for the same purpose. In the circumstances which we are assuming, the land may very easily have a special value to A since he can add it to land he already owns, but that is a value arising out of interest and, it is submitted, not out of any special purpose for which the land will be utilised or any special suitability for that purpose. It is, therefore, by no means certain that the decision in *Inland Revenue* v. *Clay and Buchanan* has been superseded.

Para. A of the Central Land Board's statement of January 19, 1949) ([1949] J. P. L. 111), may therefore be questioned where it reads "notwithstanding that the vacant land has been valued on the basis that the special suitability of the land for extending the existing factory must be ignored in compliance with Rule 3".

Valuation of Injurious Affection

Caterham Golf Club, Ltd. v. *Caterham and Warlingham Urban District Council* (1950), 1 P. & C. R. 109.

An interesting question arose during this case on which no expression of opinion appears in the decision.

The question was raised as to whether the hypothetical restriction under s. 51 (2) on all development except that within the Third Schedule applies to any land, or any interest in any land, other than the land actually being taken. The importance of this lies in the effect which restriction or freedom of development on the land retained has upon a claim for severance and injurious affection resulting from the acquisition.

S. 119 (4) of the 1947 Act provides that the word "compensation" where used in the 1947 Act in relation to compulsory acquisition includes compensation for severance and other injurious affection, disturbance, and any other matter. This would seem to require that the rules of compensation in the 1947 Act shall be applied to the whole of the claim so far as applicable.

S. 51 (1) of the 1947 Act applies the 1919 Act subject to the modifications of ss. 51 to 54. The rules of s. 2 of the 1919 Act extend to the whole claim so far as resting on the value of land and the scope of the rules of the 1947 Act would seem to be the same. Therefore, s. 51 (2) can hardly be considered as modifying only so much of the claim as relates to the market value of the land being acquired. The words "value of any such interest" in s. 51 (2) do not so limit its effect, for

s. 119 (4) refers to the acquisition of "land" and by s. 119 (1) "land includes any interest in . . . land".

Proviso (*a*) of s. 51 (2) creates a difficulty for this expressly applies to "development of the land", *i.e.*, the land to which the notice to treat relates. It provides that if, as regards the land to be acquired, permission for a development within Part II of the Third Schedule has been refused (or granted conditionally), and compensation has become payable in respect of that planning decision, it is to be assumed that permission for that development would always be refused (or granted subject to the same conditions). There is, however, no mention of the land remaining with the claimant. It would seem that as regards the land not acquired, the general provision of s. 51 (2) must be followed, and that it must be assumed that permission would be granted for any development within Part II of the Third Schedule even although permission had previously been refused. Regard must, of course, be had to s. 69 (3) under which a development charge may be payable if compensation had been paid under s. 20 in respect of the refusal. Thus the land to be acquired would be valued as if permission would always be refused for any development within Part II of the Third Schedule if permission therefor had previously been refused and compensation paid, whereas the land retained would be regarded as if permission would always be granted for such a development subject to liability to a development charge. S. 51 (2) (*b*) is not expressly limited to the land being acquired and would seem to embrace retained land as well.

The Town and Country Planning Bill

Clause 1 of the new Bill amends proviso (*a*) to s. 12 (2) of the 1947 Act, which excludes from the meaning of "development" works for the maintenance, improvement or other alteration of any building, being works which affect only the interior of the building or which do not materially affect the external appearance thereof.

Sub-clause (1) provides that proviso (*a*) to s. 12 (2) shall not apply to any reinstatement of war damage which would otherwise fall within that proviso. The amendment relates only to the making good of war damage (*i.e.*, work falling within the term "maintenance" in the proviso) and the position when the Bill is enacted will be as follows:—

1. Rebuilding: Not within s. 12 (2) (*a*) and planning permission necessary. Clause 1 (1) will not apply.

2. Internal repairs only: Being maintenance, excluded from meaning of development by s. 12 (2) (*a*). Therefore, clause 1 (1) will apply and, in future, planning permission will be necessary.
3. External repairs reinstating premises substantially as previously existing : Being maintenance, excluded from meaning of development by s. 12 (2) (*a*). Therefore clause 1 (1) will apply and, in future, planning permission will be necessary.
4. External repairs with substantial variations : Although maintenance, not excluded by s. 12 (2) (*a*) since materially affecting external appearance and planning permission necessary. Clause 1 (1) will not apply.

The effect of clause 1 (1) is, therefore, to make planning permission necessary for internal and external war damage repairs, even where the building is not materially altered and however slight the work may be. Permission in these cases is, however, already granted by class XI of the General Development Order, 1950, subject to any direction under art. 4 of the Order. By sub-clause (3) this amendment is to be deemed to have been in force since July 1, 1948, so that all directions under the General Development Orders, 1948 and 1950, will control war damage repairs beyond the limits of cost specified in the relevant direction carried out after the new Act takes effect. In practice, it will become desirable to check that there is no direction in force, or if there is one, its limitations, before proceeding with any war damage repairs however trifling. Substantial exceptions should be prescribed.

Improvements and alterations to premises not war-damaged will remain as generally provided for in s. 12 (2) (*a*), and it may be possible to alter and improve the ground floor extensively but not to repair a ceiling on the first floor. (Could one put up an improved type of ceiling instead ?)

By sub-clause (2), the reinstatement of war damage newly brought within the meaning of development by sub-clause (1) is to be regarded as included, and always to have been included, in para. 1 of the Third Schedule to the Act, so that if planning permission is granted no development charge will be payable, and if permission is refused or granted conditionally a purchase notice may possibly be served. Part VI claims will be unaffected since the assumption for that purpose will be that permission would always have been granted.

In view of the limited extent of the works in many cases, the remedy of a purchase notice under the conditions of s. 19

of the Act will often be entirely inappropriate. Of course, permission could only be refused, or granted subject to conditions in pursuance of a direction under the General Development Order, 1950, but an owner might suffer for a long time under a refusal of a permission which, in the light of subsequent events, could just as well have been granted. The burden of planning uncertainties should not be imposed on those who have already suffered the misfortune of war damage. Other owners can proceed with maintenance which is not development under s. 12 (2) (*a*); why select war damage for especially harsh treatment unless those who suffer can be compensated under s. 20?

Difficulty will arise particularly in the case, say, of a factory where the top floor has been destroyed by war damage. Reinstatement may be very desirable to the occupier who will also probably be the owner of an interest in the land, but if permission is refused the remedy is to serve a purchase notice. Whether the absence of one floor out of two or more would result in the land being considered as incapable of reasonably beneficial use is a point not yet determined, but in any event, the owner may be most unwilling to follow a course which may mean giving up possession or remaining under a short tenancy from the acquiring authority and accepting a price modified by s. 52 of the Act.

Where the making good of war damage amounts to rebuilding the case would already fall within para. 1 of the Third Schedule; the making good of war damage not amounting to rebuilding should be included in para. 3 of the Third Schedule so that the remedy for refusal of permission or for conditions attached to a permission which might be granted would be a claim for compensation under s. 20.

Clause 2 of the Bill fulfills the promise made by the former Minister to stop the hole in s. 23 by providing that an enforcement notice can be served within four years of the breach of a condition of a permission.

Compulsory Purchase for the Private Practitioner – II

By J. F. Garner, LL.M., Solicitor

In the second article of this series,[1] we are assuming that a compulsory purchase order has been made, confirmed, and become effective, which affects the land of our private solicitor's client.

(A) *Notice to treat.*

The next step in any normal case of compulsory acquisition of land, where the provisions of the Lands Clauses Consolidation Act, 1845, are incorporated in the purchase (see Act of 1946, Second Schedule) is for all landowners affected to be served with notice to treat. The effect of a notice to treat is to place the respective parties virtually in the position of a vendor and purchaser under a binding contract of sale, although it seems that the acquiring authority does not, by reason of the notice, acquire any equity in the property. However, once the notice has been served, it is clear that the vendor cannot create any new incumbrances so as to increase the liability to pay compensation of the acquiring authority (*Mercer* v. *Liverpool Railway Co.*, [1904] A. C. 461), but there seems to be no reason why the land should not be sold after service of notice to treat. It is the present writer's view that a notice to treat should be registered either in the London Land Charges Register or in the local land charges register, but in practice this is rarely done; moreover if a particular notice has not been registered and the land has been subsequently sold, the acquiring authority can readily circumvent the effect of s. 13 (2) or s. 15 (1) of the Land Charges Act, 1925, by serving a fresh notice.

A notice to treat must be served on every person known by the acquiring authority to have a legal interest in the land affected, except yearly tenants or persons holding a lesser interest, or tenants having an unexpired portion of a tenancy of less than a year (see Lands Clauses Consolidation Act, 1845, s. 121). Persons entitled to easements only are apparently not entitled to notices (*ibid.*, s. 68). The method of service for a notice to treat is now that laid down in para. 19 of the First Schedule to the Act of 1946 (see para. 6 of the Second Schedule thereto).

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[1] For the first article, see [1951] J. P. L. 19.

Subject to any provision in the enabling statute to the contrary, the power to serve a notice to treat consequent on a compulsory purchase order lapses after three years from the coming into operation of the order (Act of 1845, s. 123).

(B) *Claims for compensation.*

On receipt of a notice to treat, a landowner should prepare his claim for compensation, on a form which must be supplied by the acquiring authority, and should accompany the notice to treat. Great care must be exercised in completing this form, and it is desirable to consult a qualified valuer for assistance in this respect. It is not possible here to discuss in detail the principles of compensation, but the heads under which compensation may be claimed are as follows :—

(i) *Acquisition.* Compensation is of course primarily payable in respect of the interest of the claimant taken by the acquiring authority.

(ii) *Disturbance.* This claim relates to loss sustained by the claimant as a consequence of the taking of his land.

(iii) *Severance and Injurious Affection.*

The general principles to be applied in assessing compensation under these heads are to be found in the Acquisition of Land (Assessment of Compensation) Act, 1919, s. 2, as modified by Part V of the Town and Country Planning Act, 1947.

The form of claim should be returned to the acquiring authority within 21 days; in default, the authority may, after 30 days, refer the case to the Lands Tribunal for assessment of the compensation.

(C) *Settlement of compensation.*

If the acquiring authority are prepared to accept the claim, or if it is accepted after negotiation, the matter then proceeds in accordance with normal conveyancing practice, the vendor's solicitor deducing title, and the acquiring authority submitting a conveyance for execution.

If compensation cannot be agreed betweeen the parties, either side may (on the expiration of 30 days from the service of the notice to treat : see Lands Tribunal Rules, SI

1949, No. 2263/L.29, rule 12 (3)) refer the settlement of the claim to the Lands Tribunal. Reference is made by written application to the Registrar of the Tribunal (24, Abingdon Street, London, S.W.1.), in Form 4 prescribed by the Lands Tribunal Rules, 1949. Sufficient copies of the form must be enclosed for each of the other parties to the proceedings, and they must be accompanied by copies of the notice to treat and of the claim; the application must also be accompanied by a remittance for the fee of £1. This form is simple to complete, and should not cause any particular difficulty.

Procedure before the Lands Tribunal, which will normally hear the case in the vicinity of the land in question, follows very much that before a county court, being governed in detail by the Lands Tribunal Rules, 1949.

(D) *Costs.*

The claimant in a compulsory acquisition is entitled to any necessary costs incurred, including those of deducing title and conveyance (Lands Clauses Consolidation Act, 1845, ss. 82 and 83). It seems that these should be charged by item bill, drawn up in accordance with the provisions of Schedule II to the Solicitors' Remuneration Order, 1883, as increased (see Law Society's Gazette for December, 1947, and March, 1948). If the case goes to the Lands Tribunal, the costs thereof are in the discretion of the Tribunal (Lands Tribunal Act, 1949, s. 3 (5)), unless the case falls within one of the special rules of s. 5 of the Acquisition of Land (Assessment of Compensation) Act, 1919, as, for example, where the claimant or the acquiring authority has made an unconditional offer which has not been accepted by the other party.

(E) *Delays.*

Before notice to treat has been served, there are no means in law whereby a landowner can compel an acquiring authority to proceed with a compulsory purchase order affecting his property, except possibly the somewhat cumbersome procedure of submitting an application for development under s. 14 of the 1947 Act, and then when this has been refused, serving a purchase notice under s. 19, *ibid.* This method will not, however, necessarily succeed in all cases, and the only other course open to a landowner is to wait three years for the compulsory purchase powers to lapse as above mentioned.

Once a notice to treat has been served, it may be withdrawn only by consent, or within six weeks from the delivery of a proper notice of claim (Acquisition of Land (Authorisation Procedure) Act, 1919, s. 5 (2)). If the acquiring authority fail to settle a case of "disputed compensation", the matter may be referred to the Lands Tribunal as above mentioned; but if the acquiring authority refuse to discuss the question of compensation at all, this can hardly be said to be in dispute, and it seems that the landowner may have to have recourse to an order of mandamus (see [1949] J. P. L. 506, 687).

If the compensation has been agreed, or fixed by the Lands Tribunal, the landowner can compel the acquiring authority to proceed to completion by an action for specific performance.

(F) *Interest.*

Interest will normally be payable on the compensation money, not from the date of the compulsory purchase order, or from the date of the notice to treat, but from the date of entry on the land by the acquiring authority (if this takes place before completion); or interest may be awarded by the Lands Tribunal (see article at [1950] J. P. L. 262).

(G) *Recalcitrant owners.*

An owner who refuses to part with his land or to have any dealings with the acquiring authority, will not be able to thwart the law. The acquiring authority will be obliged to refer the matter to the Lands Tribunal, and to have the compensation fixed by the Tribunal, and they may then pay the compensation money into Court, as provided for in the Lands Clauses Consolidation Act, 1845, ss. 75–77. The acquiring authority may then execute a deed poll vesting in themselves the estate or interest of the defaulting owner, and leaving to him the task of proving his title to the satisfaction of the Court and obtaining an order for payment of the compensation moneys out of Court. Similar provisions apply to cases of persons under disability (although the payment into Court procedure is not to be followed unnecessarily: Law of Property Act, 1925, s. 42 (7)), or where the owner of the property to be acquired cannot be found.

(H) *Entry before completion.*

Under the Act of 1946 (Second Schedule, para. 3), the acquiring authority have power to enter on the land before the completion of the purchase, provided they have given at least fourteen day's notice in writing of their intention so to take possession to every owner, lessee and occupier of the land. The taking of entry under this power does not in any way affect the liability of the acquiring authority to pay compensation, but the authority will have to pay interest at 3½ per cent. as from the date of entry (Acquisition of Land (Rate of Interest on Entry) Regulations, 1947, S. R. & O. 1947, No. 791). A somewhat similar power to enter on notice (twenty-eight days for acquisitions under Part III of the Act and fourteen days for acquisitions under Part V thereof) also exists under s. 145 of the Housing Act, 1936, applicable only to acquisitions thereunder.

(I) *Easements, etc.*

Easements and restrictive covenants over the land acquired may be extinguished as a consequence of the coming into effect of a compulsory purchase order, but persons entitled to the benefit thereof (although they do not have to be served with notices to quit), may claim compensation for injurious affection under s. 68 of the Lands Clauses Consolidation Act, 1845 (see, *e.g.*, *Kirby* v. *Harrogate School Board*, [1896] 1 Ch. 437).

Progress of Development Plans

[For the convenience of landowners and their professional advisers there will be published under this heading a monthly statement of the progress of development plans required to be submitted by local planning authorities to the Minister of Town and Country Planning under s. 5 of the Town and Country Planning Act, 1947.]

The following is the list to date (January 19, 1951):—

1. West Sussex County Council (Shoreham and Lancing Beaches Part Development).
   Submitted to Minister: Oct. 26, 1948.
   (London Gazette, Nov. 12, 1948.)
   Approved (after local inquiry [1]): Feb. 21, 1950.
   (London Gazette, Mar. 3, 1950.)
2. Tynemouth County Borough Council.
   Submitted to Minister [2]: May 8, 1950.
   (London Gazette, May 9, 1950.)
   Approved (no local inquiry): Nov. 30, 1950.
   (London Gazette, Dec. 5, 1950.)
3. West Hartlepool County Borough Council.
   Submitted to Minister: Aug. 18, 1950.
   (London Gazette, Aug. 22, 1950.)
   Local inquiry [3]: Nov. 21, 1950.
4. Chester County Borough Council.
   Submitted to Minister: Oct. 18, 1950.
   (London Gazette, Oct. 24, 1950.)
   Local inquiry: No date fixed.
5. Darlington County Borough Council.
   Submitted to Minister: Dec. 20, 1950.
   (London Gazette, Dec. 22, 1950.)
   Local inquiry: No date fixed.

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[1] For an account of the inquiry, see [1949] J. P. L. 244.
[2] For a brief summary, see [1950] J. P. L. 561.
[3] For an account of the inquiry, see *ante*, p. 30.

Parliamentary Intelligence

Claims on the £300 million fund

In the House of Commons on December 15, 1950 (H. C. Debates, Vol. 482, col. 225):

In reply to Mr. Harold Davies the Chancellor of the Exchequer (Mr. Gaitskell) stated that the Chairman of the Central Land Board had reported that examination of the claims under Part VI of the Town and Country Planning Act, 1947, disclosed that one of the provisions of s. 62 (1) is giving rise to serious anomalies in some cases.

It may happen that a piece of land, owing to its proximity to land developed in a particular way, such as an isolated factory, may have had a high value before the Act for the purpose of extending that development, but, apart from the prospect of that special development, had little value save for the purposes to which it was actually being put.

Sub-s. (1) of s. 62 of the Town and Country Planning Act provides that rules (2), (3) and (4) of the Rules set out in s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919, are to apply in computing values under Part VI as they apply in relation to the compulsory purchase of interests in land. Rule (3) provides, among other things, that the special suitability or adaptability of land for any purpose shall not be taken into account if that purpose is one for which there is no market, apart from the special needs of a particular purchaser. Where, on July 1, 1948, a piece of land was, in fact, held by the owner of the adjoining land to whom—and to whom alone—it possessed this special value, the effect of rule (3) is to reduce to little or nothing the development value disclosed by the claim, despite the fact that a substantial development charge may be incurred if the piece of land is, in fact, developed in this very likely manner.[1]

Mr. Gaitskell had, therefore, requested the Central Land Board, when valuing claims under Part VI to proceed on the basis of disregarding the provision in rule (3) in cases where the land was held before the appointed day by the claiming owner for the purpose of development in connection with his business carried on on adjoining land. Before the scheme is finally made, amending legislation will be needed to give effect to this arrangement, but from now on the Central Land Board will proceed on the amended basis.

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[1] This state of affairs gave rise to a heated interview with the District Valuer in Barsetshire last November, see [1950] J. P. L. 833.

The arrangement will apply to claims of owners of land held for the extension of their own factory. It will also apply, in some cases, where a building or a plot of land adjoining a commercial property was held before the appointed day for incorporation within that property. It will not apply to any case where the land was not owned on the appointed day by the person to whom it had this special value. Moreover, it will not apply to cases where it is claimed that a dwelling-house might be extended over its garden; or to increase the unrestricted value of a part of a building above that which it would have in the open market, apart from the needs of the owner of the remainder.

Mr. Gaitskell stated that it would not be practicable at this late stage to allow further claims to be made on the £300 million fund, even though potential claimants deliberately omitted to put in claims within the time limits prescribed by the Act and regulations, because they were of opinion that the application of rule (3) would render a claim fruitless. Before the scheme to be made under s. 58 has been drafted it was not possible to say what steps it will be necessary to take to meet cases of hardship which may be found to have arisen from this cause. If any such cases are notified to the Board, although no action with regard to them can be taken at present, they will be carefully recorded for such consideration as it may be decided to give to them at a future date. The same difficulties arise under s. 59 (1) of the Town and Country Planning (Scotland) Act, 1947, and will be dealt with in the same way.

Development in Barsetshire

Limited planning permission for use of first floor of building as offices

The following conversation may be assumed to have taken place between S., a surveyor, and D.V., the district valuer, during an informal discussion on development charge :—

S. This case, like so many which we discuss, is rather complicated, especially in the application of the tolerances.

D.V. You mean that as the already existing office use of the ground floor of the building was entered into after the appointed day you come, not under the Third Schedule to the Act, but the Development Charge Exemptions Regulations? Surely the practical effect is the same.

S. Yes, it is, but the same difficulty arises because the tolerance has to be calculated by reference to the cube used for the respective purposes.

D.V. I am rather inclined to take a short cut in these cases by calculating the tolerance on the floor space. It usually gives practically the same answer. In this case your existing ground floor office use occupies a net floor space of 1,000 sq. ft. and your permission is in respect of the first floor totaling 600 sq. ft. If I subtract 1/10th of 1,000 = 100 from the 600 that leaves 500 sq. ft. liable to charge.

S. I hardly think that's fair because the ground floor is much higher than the first and the cube basis which is laid down in the regulations would give a larger tolerance.

D.V. (*consulting his notes*). I see the ground floor is 12 ft. high internally and the first floor 9 ft. That gives 12,000 ft. cube for the ground floor and 5,400 for the first, and my calculation of the tolerance becomes :—

	Cub. ft.
Cube already used for office purposes	12,000
Tolerance 1/10th thereof =	1,200
Cube for which planning permission given	5,400
Cube liable for charge	4,200

Converting to floor space $\frac{4,200}{5,400} \times 600 = 466$ sq. ft. liable for charge

S. I think you are still not quite right. You have taken the net internal cube whereas the appendix to the PRACTICE NOTES says the cube shall be computed by outside measurements. Therefore, I have taken a cube which includes the outside walls, passages, stairs and the roof, as well as an allowance for footings.

D.V. But the pitched roof comes wholly over the upper part. Doesn't that swell your first floor cube and reduce your tolerance?

S. No, because I apportion the roof between the floors according to their respective cubes: similarly with regard to the footings.

D.V. (*in despair*). Don't you think the provisions of the Act are sufficiently complicated without introducing further, too ingenious, inventions of your own.

S. I am only trying to do it in the manner laid down—I am not inventing anything.

D.V. What about the stairs and passage on the ground floor? They lead to the upper part, which is residential at present and should not be included in your office cube.

S. The office people use a lavatory on the first floor so I have felt justified in including the whole cube of the ground floor hall and stairs in the office portion.

D.V. How does your calculation work out?

		Cub. ft.
S. The outside cube of the ground floor offices is		16,000
and of the first floor for which consent is now given		6,000
	cub. ft.	
These figures exclude the roof	5,000	
and footings	1,500	
		6,500
	Total	28,500

I have to apportion the 6,500 between the 16,000 and the 6,000, which I do arbitrarily upon the basis of the proportion between them.

	Cub. ft.
Hence, 16,000 + (16/22nds × 6,500) =	20,727
Tolerance 1/10th thereof =	2,073
Cube for which planning permission given = 6,000 + (6/22nds × 6,500) =	7,773
Cube liable for charge	5,700

Converting to floor space :—

$$\frac{5{,}700}{7{,}773} \times 600 = \text{say } 435 \text{ sq. ft. liable for charge.}$$

D.V. I am not sure you wouldn't have done better to have left the roof out, but, in any case, I am a tolerant man and am not going to argue with you about 31 sq. ft., which seems to be all the difference between us. I will accept your 435 sq. ft.

S. That saves a lot of trouble, as I have worked out my calculations on that basis, *viz.* :—

			£
Consent Value :	435 sq. ft. at 10s. =		217
	Years purchase—in view of risk and necessity to amortise money over short period of 5 years, say		3
			£651
		£	
	Cost of alterations	250	
	Sum to set aside to provide for rehabilitating to residential use at end of 5 years, 200 × .8 =	160	
		410	
	Developer's profit 10 per cent., say	41	
			451
			£200
Refusal Value :	Rent as a flat	50 p.a.	
	Y.P. 5 years' 6 per cent. & 2½ per cent. =	4	
			200
			Development charge *Nil*

D.V. I am not quite in agreement with you. Although I have worked out a calculation on similar lines to yours as a practical means of arriving at the amount of the charge, it is not strictly in accordance with the Act.

However, I take my consent value at 12s. 6d. in place of your 10s., and since you have had the benefit of a tolerance I have scaled down your present expenditure so far as it relates to the tolerance you have claimed as exempt.

My calculation is :—

		£
Consent Value : 435 sq. ft. at 12s. 6d. = say		270
Y. P.		4
	£	1,080
Cost of alterations	250	
Reduced in proportion of tolerance = $\frac{5{,}700}{7{,}773}$ = say	60	
	190	
Developer's profit 20 per cent.	38	
		228
		£852
Refusal Value : Rent as a flat	50	
Y.P.	4	
		200
Development charge		£650

You will see that I have disallowed the expenditure for conversion back to a flat—at the end of the five years you might get a further period of office user.

S. I think you are quite unwarranted in assuming that. The planning permission which attracts this charge has as one of its conditions "that the use as offices shall cease at the expiration of the five years". Further, your four years' purchase doesn't make sufficient provision for amortisation, having regard to present rates of income tax, over such a short period as five years.

D.V. But you have used four years' purchase for the flat rent.

S. Yes, but the residential use continues, remember. We have only taken this slice of five years for the purpose of comparing its value with the equivalent period of office use.

D.V. Well, I will adopt your three years' purchase—that knocks off £270 to start with. Then I think I can concede something on the cost of the altering back—say, £120 plus something for profit. It looks like about £400 off my £650; what do you say to a development charge of £250?

S. It is too much, in my view.

D.V. I think I've met you rather handsomely—and I hardly believe you would be going to the trouble of extending the offices if there was no value in it.

Book Review

Cripps on Compulsory Acquisition of Land. Ninth Edition. By Anthony Cripps, M.A., Barrister-at-Law, assisted by B. Keith-Lucas, M.A., Solicitor, and S. Lloyd Jones, LL.M., Solicitor. (Stevens. 1950. In two loose-leaf volumes, £8 8s. (for the two volumes and six months' service). Supplemental service, £1 10s. per annum).

The editors of the Ninth Edition of Cripps were faced with a formidable task. The spate of post-war legislation has rendered the greater part of the Eighth Edition out of date and yet there are still many passages in that edition which are an authoritative exposition of the law.

The editors have wisely divided the running text and statutory matter into separate volumes. The text of Volume I contains much valuable material from its predecessor and there has been severe pruning of obsolescent detail. Provision for future amendment has been made by adopting the loose-leaf system, though the difficulty of amending a running text in this way is brought home by the rather untidy incorporation of the Lands Tribunal Act, 1949. The work is now most comprehensive, dealing not only with all aspects of compulsory purchase and compensation but also with the requisitioning of land, a topic which seems likely to concern lawyers for years to come.

The problems inherent in producing such a massive work have not, however, been entirely solved. The mixture of the old and new law is not always satisfactory and it might have been preferable to state in one chapter the old principles of compensation and in another the new rules, at the same time indicating which of the old principles survived. For instance, page 500 of Volume I is headed "Basis under Acquisition of Land Act, 1919" and under a heading "General Principles" on page 503 the principles derived from a case in 1915 are set out, which are, of course, principles under the Lands Clauses Acts.

Then the attempt to cover comprehensively such a large field of statutes and orders has resulted in much of Volume I being merely explanatory. Minor but important questions tend to be overlooked, while considerable attention is directed to general matters such as "permitted" development and the incidence of development charge, which are not directly germane. For example, s. 76 (4) of the Act of 1947, which is strictly relevant to the subject-matter, does not appear to be mentioned except briefly on page 476 and then by inference; the effect of s. 119 (4) of the Act of 1947 upon compensation for injurious affection and disturbance is not considered; and the paragraph on page

468 is surely inadequate to deal with compensation where there is contravening development. Compensation in relation to licensed premises might be dealt with more fully and the line of cases beginning with *Errington* v. *Minister of Health* and including *Franklin* v. *Minister of Town and Country Planning* merits more detailed treatment.

The danger of printing parts only of statutes in Volume II is emphasised by the glaring omission of s. 120 (Short title, commencement and extent) of the Act of 1947, which is all the more regrettable as there is a misstatement as to the commencement of Part V of the Act on page 403 of Volume I.

As these are loose-leaf volumes, alterations can be made, and one is certain this welcome and valuable work will attain in every respect the high standard of its predecessors.

R. D. S.-B.

Notes of Cases

Challenging the Minister's Decision on a Question of Law

R. v. Northumberland Compensation Appeal Tribunal, Ex p. Shaw (1950), 1 P. & C. R. 288. This was a case which may be of considerable importance in many spheres of law, and in particular that of town and country planning.

The Divisional Court of the King's Bench Division, allowed a motion for an order of certiorari directed to the Northumberland Compensation Appeal Tribunal in relation to a question of compensation under the National Health Service Act, 1946, for loss of employment.

It had formerly been generally thought, on the authority of the Court of Appeal's decision in *Racecourse Betting Control Board* v. *Secretary of State for Air*, [1944] Ch. 114, that where a tribunal was empowered by statute to decide certain matters and no right of appeal from the tribunal's decision was provided, the High Court had no jurisdiction to review the tribunal's decision unless it had exceeded its jurisdiction. But in the Northumberland tribunal case the Divisional Court held that in the light of two previous material decisions, one of the House of Lords (*Overseers of the Poor of Walsall* v. *London and North Western Railway Company* (1878), 4 App. Cas. 30) and the other of the Judicial Committee of Privy Council (*R.* v. *Nat Bell Liquors, Ltd.*, [1922] 2 A. C. 128) which had not been cited to the Court of Appeal in the 1944 case, that case was not now binding on the Court and should not be followed.

The Divisional Court held that as the Northumberland tribunal had given reasons for their decision, and thus told the Court their view of the law, it was open to the Court, since it found that view of the law to be wrong, to quash the tribunal's decision. Certiorari would therefore issue. Lord Goddard, C.J., who had also been a member of the Court of Appeal in the 1944 case, said that it was very beneficial that they should arrive at this decision, because now that many tribunals had been set up under various Statutes, it must be for their benefit that the Divisional Court should be able to give guidance to them, which it could if they set out their decisions in " speaking orders ".

It appears that this decision, if not reversed on appeal,[1] will apply in relation to certain planning appeals under the Town and Country Planning Act, 1947. A decision of the Minister under s. 17 is always a question of law and reasons for the decision are in practice usually given—the determination is in the form of a " speaking order ". It follows that the decision of the Minister on a s. 17 appeal may be challenged by certiorari on the grounds that a mistake in law has been made. If a s. 16 appeal is founded upon a question of law, stated in the determination, similar considerations will apply.

The decision should, however, be viewed with some reserve. Not only is there the possibility that the case itself may be reversed on appeal, but the decision is a recent one and the principle has not yet been applied to Ministerial determinations under Acts such as the Act of 1947.

Although the prerogative orders are remedies quite distinct from the remedy of appeal, and may lie although no right of appeal has been provided by statute, it remains to be seen what construction would be placed by the Court upon the provision in the Act of 1947 that the decision of the Minister shall be final (s. 15 (3) as applied by s. 16 (2) and s. 17 (2)). There was no such provision in relation to the Northumberland tribunal, and it would no doubt be a matter for legal argument in a case under the Act of 1947. It is submitted, however, that this provision relates only to appeals to the Courts, and does not prevent the issue of an order of certiorari in respect of a decision of the Minister. The authorities—which are rather ancient but nevertheless probably still good law—indicate that the remedy of certiorari is not excluded except by express negative words in a statute—*R.* v. *Plowright* (1686), 3 Mod. Rep. 94; and words that direct that a matter shall be " finally determined " by the tribunal are not sufficient to exclude it—*R.* v. *Jukes* (1800), 8 Term. Rep. 542.

It is, of course, true that quite apart from the remedy of certiorari, if the Minister has made a mistake of law—*e.g.*, decided that a change of use is " development " when the court will say it is not within the s. 12 definition—it is possible for the owner of the land to carry out the development without planning permission, await an enforcement notice, and appeal to the court of summary jurisdiction against any such notice which is served, on the grounds that there has not been any development. It is expressly provided by the

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[1] It is understood that notice of appeal has been given in this case.

Act (proviso to s. 17 (2)) that the Minister's decision is not final in relation to such an appeal, and a further appeal from the court of summary jurisdiction to quarter sessions is possible (s. 23 (4)). Further, it is possible in such a case for the appellant to require the court to state a case on a point of law for the decision of the High Court. But in practice this may not be a convenient course from the point of view of the intending developer. He is unable to get a decision by the court until an enforcement notice has been served and it may be wholly uncertain as to whether that will happen, and if so, when, and in order to get a decision at all he must, at his peril, carry out the development.

The decision in the Northumberland tribunal case accordingly opens up a possibility of challenging certain of the Minister's decisions in the High Court, although it remains to be seen whether any, or any substantial number, of unsuccessful appellants will seek to secure a reversal of the Minister's determination by this method.

H. J. B.

Form L.39 not Ultra Vires

In **Robertson v. Central Land Board** [1] (December 6, 1950), the First Division of the Court of Session reversed the decision of Lord Birnam (1950), 1 P. & C. R. 206 (noted [1950] J. P. L. 696) and held that the Central Land Board were justified in asking the questions contained in the letter in the Scottish equivalent of Form L.39 and that the letter putting the questions was within the powers of the Board. The Court were of opinion that the letter was authorised under the Scottish equivalent of paragraphs (xxiii), (xxiv) and (probably) (xxv) of Reg. 3 of the Claims for Depreciation Regulations, 1948 (SI 1948, No. 902). It was immaterial whether the letter was strictly accurate in stating that the effect of the Regulations was that if the required information was not given to the Board by the date specified the claim would " automatically lapse ".

J. B.

Development Charge—Area to be Assessed

Sinclair-Lockhart's Trustees v. Central Land Board [1] (January 6, 1951). The First Division of the Court of

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[1] A full report of this case will be published in Vol. 1 of *Planning and Compensation Reports.*

Session confirmed the decision of Lord Mackintosh (1950), 1 P. & C. R. 195 (noted [1950] J. P. L. 589) but a dissenting judgment was given by Lord Carmont.

The pursuers (appellants) had obtained planning permission for the erection of a farmhouse, no land other than that on which the building would stand being included in the application therefor. The Central Land Board had assessed the development charge at £140, and admitted that they had had regard not only to the bare site but also to a notional "normal" garden and access to the property, without regard to the question of ownership of the premises, *viz.*, "such an area as might reasonably be required for the erection of such a dwelling-house, including appurtenances such as garden ground and access in the locality".

The Lord President said that the Court had jurisdiction to set aside the Central Land Board's determination if the Board had exceeded their statutory duty, *e.g.*, by valuing the wrong thing.

He was of the opinion that the Board could have regard to considerations beyond the limits of the actual building, even if any garden or curtilage had been omitted from the plans. But in some cases assessment of a charge on the footing of a notional garden would be outside the powers of the Board.

By Scottish law, although not by English law, a farmhouse had always been regarded as part of the farm; and the whole valued as *unum quid*. He would have thought that in cases of "true" farmhouses, the direction to the Board to apply "normal processes of valuation" would have led to the development charge being the difference between the farm with and without the right to build the farmhouse. But it was the Board's policy to adopt the "house-plus-notional-garden" method, and this might involve the Board in valuing the wrong thing.

In the present case, however, the pursuers had based their case on the contention that the only land which the Board could consider was that on which the building would rest, and this contention must fail and the action be dismissed.

Lord Keith said that he thought the difficulties arose from the indeterminate nature of the unit which the pursuers proposed to develop and for which planning permission had been granted.

He did not accept the argument that any curtilage of the dwelling-house was exempt from development charge under paras. (*d*) or (*e*) of s. 10 (2)[2] of the Scottish Act of 1947, since both paragraphs refer to the use of an existing curtilage and not to the setting up of a future one. Also, in para. (*e*) he did not consider "agriculture" included cultivation of the garden of a dwelling-house.

With regard to the area taken into consideration by the Board, the planning permission did not prevent a curtilage being attached to the house,[3] and the Board by including the curtilage had not valued something different from what the permission covered, and therefore they had not exceeded their powers.

This being so, the matter was entirely one of *quantum*, and as it had not been suggested that the Board had not followed the statutory directions in fixing the amount of the development charge, the Court could not interfere and the action should be dismissed.

Lord Carmont said that it was not disputed that that which had to be assessed by the Central Land Board was that which had been accorded planning permission. The application for such permission had related only to a plot of 1,300 square feet on which to place the farmhouse, and this site was not adjacent to either the public or private roads serving the farm. It had also been in respect of a farmhouse as distinct from a dwelling-house, but the Central Land Board had assessed the charge on the basis of the erection of a dwelling-house, *i.e.*, a house having an imaginary access to something other than the farm lands for persons occupying the house as a dwelling-house separate from the farm. The regulations required the additional value of the land "due to planning permission for a particular development" to be measured, and in this case that was permission for a farmhouse on a plot of 1,300 square feet, not requiring any specific access except to the farm.

In his opinion, the Board had gone outside their powers both in relation to the purpose of the development and as regards the area valued, and he was in favour of reducing the assessment accordingly.

H. J. B.

Section 85 : Land held on Charitable Trusts

Crystal Palace Trustees v. Minister of Town and Country Planning (1950), 1 P. & C. R. 247. This was an appeal under

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[2] Corresponding to s. 12 (2) of the English Act.

[3] This appears to be in conflict with the views of Lord Goddard, C.J., in *Sampson's Executors* v. *Nottinghamshire County Council* (1949), 1 P. & C. R. 1, at p. 8.

s. 92 of the Town and Country Planning Act, 1947, to determine whether land held by the trustees for " the promotion of industry, commerce and art " is land to which s. 85 applies.

The Minister had determined that the trustees were not a charity.

Danckwerts, J., reversed the Minister's determination, holding that (1) so far as the objects of the trustees involved the promotion of art, they were not other than charitable; (2) as regards the promotion of industry and commerce, the position was less certain, but having regard to the surrounding circumstances, the intention of the Act was the benefit of the public and this was accordingly a public purpose of a charitable nature.

H. J. B.

Prosecutions for Non-compliance with Enforcement Notices [1]

On December 7, 1950, there were prosecutions under s. 24 of the Act of 1947, before the magistrates of the Borough of Ashton-under-Lyne in respect of contraventions of an enforcement notice.

The defendants were the Road Haulage Executive, who were charged with the unauthorised use of certain land for the tipping of industrial waste materials, in contravention of the enforcement notice and contrary to s. 24 of the Act, and the owners of the land in question, who were charged with permitting such use.

An interim development permission in 1947 had authorised the tipping on the land of dry ashes only, with a condition as to the height of the tip. The Road Haulage Executive had, to the knowledge of the owners of the land, tipped considerable quantities of other waste matter, and the borough corporation had eventually served enforcement notices requiring discontinuance of the tipping and tidying up of the surface of the tip. Before the enforcement notices took effect the owners of the land had applied for planning permission for the tipping of all types of industrial waste, but permission had been refused and the owners, who were notified accordingly, did not appeal against the refusal within the specified period.

The tipping of the unauthorised waste materials had been continued in the meantime, and several further loads were tipped after the last date for appeal to the Minister against the refusal of planning permission, thus resulting in liability to the present proceedings under s. 24 of the Act. Both defendants pleaded guilty and gave assurances that the unauthorised use had since been discontinued. A fine of £10 was imposed in both cases.

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[1] We are indebted to the Town Clerk of Ashton-under-Lyne for the information relating to these prosecutions.

H. J. B.

*Lands Tribunal Decisions**

Pearce v. City of Bristol (Reference 59/1950, December 21, 1950). This was a claim for compensation by a tenant who had held 122.703 acres of farm land on a yearly tenancy at a rent of £264 per annum, and who had been dispossessed following notices of entry served by the acquiring authority in August, 1947, and June and July, 1948.

The Tribunal (SIR WILLIAM FITZGERALD, K.C., and J. P. C. DONE, ESQ., F.R.I.C.S.) held that as the authority had acquired possession under the Acquisition of Land, etc., Act, 1946, and not the Agricultural Holdings Act, 1948, the limit of two years' rent of the holding specified by s. 34 (2) of the Act of 1948 did not apply. Further, that since in the case of an agricultural holding the power to give a valid notice to quit depends upon conditions which may never arise, the value of an unexpired term of such a holding is not limited, as that of business premises may be, by the prospects of continuing only during the contractual term.

The claim for compensation for disturbance fell under two headings. In assessing compensation for loss on the forced sale of stock, the Tribunal determined that any loss due to general depression of market prices at the time of the sale or to the effect of a fine day in keeping potential buyers (farmers in a wet season) away from the sale, was too remote.

In assessing compensaton for loss of profit and employment, the principle of taking two years' purchase of the profits was agreed. The tribunal held that in calculating the profits for this purpose, on the facts of this case no deduction should be made in respect of notional wages of the claimant, but that a deduction should be made for interest on capital at the rate of 5 per cent. on the capital re-invested in farming operations on part of the land which the claimant had been granted a licence to re-occupy, and at 3½ per cent. on the remainder of the capital.

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* Full reports of these cases will be published in Vol. 1 of *Planning and Compensation Reports*.

The figures were accordingly the average profit per annum from 1945–1948) *viz.*, £559 8s., less £85 for interest, giving £474 8s., which at two years' purchase was, say, £950. To this had to be added a figure of £471 7s. 10d. which had been agreed in respect of tenant right, making the total sum £1,421 7s. 10d., say £1,420, which was the compensation payable.

Rogers v. Borough of Wisbech (Reference 49/1950, December 20, 1950). The owner of premises comprising two shops with living quarters and a small yard attached to one of the shops, which had been acquired compulsorily by the respondent authority, claimed compensation. Notice to treat was dated August 11, 1948.

The first shop (hairdressing) was let to a son of the claimant at an inclusive rent of 11s. per week; the second shop (tobacco and confectionery) and living accommodation were let to a daughter of the claimant at an inclusive rent of £1 per week.

The Tribunal (CECIL H. BAILEY, ESQ., B.SC., M.I.C.E., F.R.I.C.S.) did not accept the valuation of £3,500 put forward on behalf of the claimant, where it had been assumed that the actual rents of the two shops, £80 12s., were lower than those obtainable in the open market and should be increased to £194 10s. This had not taken into account that the first shop was subject to the notional lease under s. 52 of the Act of 1947, and that the second shop was subject to the Rent Restriction Acts, and also had made no allowance for any increase in rateable value or in respect of the water rate.

The Rent Restriction Acts applied to the living accommodation and second shop, and the present rent of £52 was the standard rent. By s. 52 (5) of the Act of 1947, a right to vacant possession could not be assumed.

In relation to the first shop, the rent of 11s. per week was a low one, and the notional lease provisions of s. 52 of the Act of 1947 had to be applied. The rent for the purposes of the notional lease could be taken to be the rent which would have been paid by a tenant as from the date of notice to treat to January 1, 1954, as the alternative of 5 per cent. of the capital value under s. 52 (3) would be a higher figure and so not applicable.

Apart from the notional lease the rent for the first shop was determined, having regard to comparable lettings, at

£52 p.a., giving a total rent for the whole premises of £104, from which £33 had to be deducted for rates, repairs and insurance, resulting in a net rent of £71.

The compensation was accordingly the value of this net rent, allowing for the notional short-term lease until 1954 and the possibility of an increase in rateable value, and taking into account the state of repair of the premises and probable increase in costs relating thereto, and this was determined at £1,127.

Nye v. London County Council (Reference 48/1950, January 10, 1951). This was a claim for compensation for the acquisition of a leasehold interest, *viz.*, the balance of a term of eighty-one years expiring on December 29, 1979, held at a rent of £50 per annum, in a Thames-side wharf at Rotherhithe Street, London, S.E.16, the building on which had been destroyed by enemy action.

The acquisition followed confirmation of a purchase notice served by the claimant under s. 19 of the Town and Country Planning Act, 1947, and was the first such case to come before the Lands Tribunal. Notice to treat was deemed to be served on May 30, 1949. A cost of works payment had been agreed by the War Damage Commission and the compensation was accordingly to be taken to be the value which the interest would have if the whole of the damage had been made good before the date of the notice to treat. The building (site area, 1,576 square feet; floor area, 4,619 square feet) had been specially reinforced to take heavy loads.

The claimant claimed £7,800, based on a valuation of the cost of rebuilding and on rental values for the floor space. The respondent authority valued the interest at £3,400, based on lower values for floor space.

The Tribunal (SIR WM. FITZGERALD, K.C., J. P. C. DONE, ESQ., F.R.I.C.S., and F. WEBSTER, ESQ., B.A., LL.B.) having regard to the price paid by the respondent authority for another larger wharf adjoining this property, decided upon a rental of £713 p.a. for the whole building. They considered that a small building of sound construction would be accepted as a better security than a large building. Eight per cent. had been adopted as the figure by which to calculate capital value in the case of the adjoining wharf and they were of the opinion that 7 per cent. was the appropriate figure in this case for a rental in perpetuity.

Having regard to the notional lease provisions of s. 52 of the Act of 1947 on this basis, and taking 8 per cent. and 2½ per cent. as the rate upon which the reversionary lease should be calculated, the tribunal assessed the compensation at £5,860.

Having regard to the possibility of further proceedings in *East End Dwellings Co., Ltd.* v. *Finsbury Borough Council*[1] the tribunal approved a figure of £400 agreed by the parties as the additional compensation to which the claimant will be entitled if s. 53 of the Act of 1947 means that the compensation is to be based on the value which the interest would have if the whole of the damage had been made good the day before the notice to treat, *i.e.*, as a new building.

Practical Points

(*Continued from p.* 124)

is explained in para. 16 (*c*) of Practice Notes (First Series).[2] If the occupation of the premises commenced after the appointed day, exemption 4 (1) of the Exemptions Regulations would apply in lieu of the Third Schedule to the Act.

As to planning permission, Class VIII of the General Development Order would be applicable to an enlargement for Use Class IV purposes up to 5,000 square feet of additional floor space or one tenth of the cube (whichever represents the smaller enlargement): beyond that permission would be necessary.

Complete car cellulosing would certainly seem to bring the part of the premises used for that purpose into Class VIII of the Use Classes Order, 1950, and planning permission would be required. Article 3 (2) of that Order and exemption 4 (2) of the Exemptions Regulations would apply to the use after it had been established with permission (subject to any conditions of the permission) and development charge had been determined. [W. A. L.]

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[1] (1950) 1 P. & C. R. 104. This decision was subsequently reversed by the Court of Appeal: 1 P. & C. R. 257.

[2] [1949] J. P. L. 252 ff.

Notes of Planning Decisions*

Alteration in Number of Flats

The Minister of Town and Country Planning has allowed an appeal against the refusal of Beckenham Borough Council to permit the second floor of premises in Beckenham to be used as two separate flats.

Permission had already been granted for conversion of the premises into four flats, including one on the second floor. The Minister states that the proposed change of use will not prejudice the proper planning of the area, and that the internal arrangement of the building is not a matter for planning control.

[By courtesy of the Public Relations Officer, Kent County Council.]

Conversion of Guest-house to Private Dwelling-house/Tailoring Business

The Minister of Town and Country Planning has conditionally allowed an appeal against the refusal of Folkestone Borough Council to permit the conversion of a guest-house at Bouverie Square, Folkestone, to a private dwelling, and use of two ground floor rooms for a tailoring business.

The Minister observes that the appellant recently bought the house for the occupation of himself and his family, and that the business would be conducted entirely by them. It was not proposed to make any alteration in the external appearance of the building.

The Council considered that there were already adequate shopping facilities nearby, and were anxious that Bouverie Square, which consists mainly of guest-houses and offices, should not be converted into another shopping centre.

The Minister feels that the proposal is innocuous and will not lead to any appreciable change in the character of the Square. While allowing the proposed use of the building, he imposes the conditions that it shall not be used for any other purpose, and that no alteration shall be made to the front of the building.

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* The Managing Editor desires to express his thanks to those who have been kind enough to send to this Journal particulars of planning decisions, and hopes that he will continue to receive particulars of planning decisions which involve points of general interest.

[By courtesy of the Public Relations Officer, Kent County Council.]

Commercial Garage in Residential Area

The following is an extract from the letter of the Minister of Town and Country Planning, dated December 2, 1950, dismissing an appeal against the refusal of the Monmouthshire County Council to grant planning permission for the erection of a garage for commercial use on land at Abergavenny.

" The proposed commercial garage which is to be erected within the curtilage of a semi-detached dwelling-house fronting the west side of a narrow street is intended to replace an existing and smaller garage. It is situated in a predominantly residential area of the town. You commenced business as a taxi-driver in 1947 and during that year obtained temporary planning permission, expiring in 1950, to use the present garage to accommodate two motor vehicles. Your business has now been expanded to include a taxi, two private cars and a charabanc for which the additional accommodation is required.

After giving very careful consideration to all the facts of the case and to all the representations of the parties concerned, the Minister has come to the conclusion that he would not be justified in reversing the Council's decision. Despite the existence of one industrial user opposite your site, the surrounding area is residential in character and the Council propose to reserve it for that purpose in the Development Plan now in course of preparation. A site in the midst of residential property is clearly unsuitable for the establishment of a large commercial garage, and would be detrimental to the amenities of this neighbourhood."

[By courtesy of the County Planning Officer of the Monmouthshire County Council.]

Piggeries in Residential Area

The Minister of Town and Country Planning has dismissed an appeal against the refusal of Cheadle Rural District Council to permit the erection of a piggery, including a range of four piggeries, each 6 ft. by 4 ft., situated about 100 ft. from the nearest house, with a pig run within about 25 ft. of the back of the dwelling, in a residential district.

The Minister stated that he was in agreement with the Council that a piggery of this size, in close proximity to residential development, is undesirable and cannot fail to have an adverse effect on local amenities.

[By courtesy of the County Planning Officer of the Staffordshire County Council.]

Use of Land as Caravan Site

The following is an extract from the letter of the Minister of Town and Country Planning, dated December, 1950, conditionally allowing an appeal against the refusal of the Chertsey Urban District Council to permit the use of land at Lyne, near Chertsey, as a caravan site.

" The Minister notes that initially your Council appeared to give very favourable consideration to the proposal made by the appellant, and there can be no question but that the appellant was thereby encouraged to proceed with her plans and to purchase the land.

At a later stage, as a result of local representations, it seems that your Council changed their minds and refused permission on the grounds that ' the proposal would detract from the amenities of Lyne ' and that ' the existing services of Lyne are inadequate to cater for any substantial increase in the population '.

The Minister has studied the facts most carefully on the major point of amenity. It appears to him that the objections have in fact very little substance. The cleared land, on which it is proposed that caravans shall stand, is surrounded by dense bordering growths which are to be preserved as a screen. In respect of other physical attributes of the site, the Minister understands that it is well drained, with gravel sub-soil, and that water and electricity are available to the site. Furthermore, there is no intention of extending the cleared land, and the Minister can find no reason why a properly conducted caravan site should interfere with the amenities, either of the local population in general or to individual householders whose properties march with the land under appeal.

The appellant obviously has the interests of the countryside at heart, and the Minister sees no reason to doubt that the appeal site would be conducted in an orderly and satisfactory manner. In this connection the Minister notes that the Secretary of the Caravan Club of Great Britain has warmly endorsed the appellant's qualifications.

The Minister has therefore come to the conclusion that his proper course is to permit the use as proposed for a limited period initially, subject to certain conditions being fulfilled.

Accordingly, he allows the appeal and grants permission for the use of the land as a caravan site as proposed, for a period of seven years from the date of this letter, subject to the following conditions :—

1. That no more than 100 caravans shall be permitted on the site at any one time.
2. That these caravans shall be confined to the existing clearing of approximately 10 acres at the western end of the site.
3. That the detailed layout of the site shall be as may be agreed between the appellant and the local planning authority, or in default of agreement as shall be determined by the Minister."

[By courtesy of the Secretary of the Caravan Club of Great Britain and Ireland.]

Use of Large Shed on Airfield as a Warehouse

The following is an extract from a letter of the Minister of Town and Country Planning, dated December 2, 1950, extending the period allowed by the Wiltshire County Council for the use of an old hangar at Zeals Airfield, Mere, as a warehouse for storing dried milk. The Council had given a limited permission for three years on the ground that permanent retention of the shed would injure the amenities of the locality.

"While the Minister agrees that this large building is unsightly, and that a warehouse is an inappropriate structure in the midst of the open agricultural countryside, he does not consider that its effect on the amenities of the area will be so harmful as to warrant its early removal. If carefully maintained, the structure has a probable life of much more than three years and the Minister considers that in the present circumstances it would be wrong to sacrifice this valuable storage place at the end of three years. He has accordingly decided to allow the appeal to the extent that he permits the use of the building for the storage of dried milk for a period of ten years."

[By courtesy of the County Planning Officer, Wiltshire County Council.]

Correspondence

To the Managing Editor,
Journal of Planning Law.

Sir,

Delays in Planning Decisions

We are disturbed by the very great time that elapses in some cases before any decision is given by the appropriate authority on a planning application. Such delays can be most distressing to a business concern and they can be vital to a private person wishing to build his own house.

A case of the latter class has recently occurred in our practice. A client, wishing to purchase a single plot of land to build his own house first instructed us to obtain planning approval for the erection of one dwelling-house. Our application was made on April 26, 1949; we received a refusal to develop the land on January 4, 1951.

During this long time, we brought all the pressure we could on the authorities to obtain a decision. We soon found that it was dependent on a high level decision whether a new road was to be constructed in the future on part of this land. This decision was, of course, being fought out with the County Authority and the Ministry of Transport.

Our client could, of course, have appealed to the Minister on the doubtful grounds of a " no decision ", but the outcome of such an appeal would have been dependent on just the same factors regarding the new road and there was the danger of expensive procedure, with still no decision until the question of the road was settled. Such expense is hardly a possibility to a man purchasing a single plot.

On receipt of the refusal, an appeal is still possible, but after such a high level decision on so major a matter as the road, an appeal is most unlikely to succeed. Any thoughts of compensation or a purchase notice are not open to our client, as he has not purchased the land.

So, after over one year and eight months, he has achieved nothing, has wasted that same time and priority on the building licence waiting list (our application was returned pending the planning decision) and now has to re-commence the same procedure all over again for another site.

Such delays seem to be unpardonable and the single plot owner appears to have no means at his disposal to prevent them. We bring this case to your notice merely as an example of the sort of delays which are occurring in many places. It is, of course, during the period of preparing development plans for the various areas and presumably when the Minister has approved such plans then delays of this kind will be unnecessary. Surely something should be done during this present time to prevent delays that are so out of proportion.

Yours faithfully,
J. Stanley Beard, Bennett & Wilkins,
Chartered Architects, Surveyors.

London, W.1.

Practical Points

All questions for consideration should be addressed to "The Managing Editor, The Journal of Planning Law, 3 Chancery Lane, London, W.C.2." The questions of subscribers only are answerable in the Journal. All questions should be submitted in duplicate. The Publishers cannot accept any responsibility for the correctness of replies.

282. *Enforcement notice—development authorised for duration of "Emergency".*

On October 29, 1941, interim development permission under the Town and Country Planning Act, 1932, was granted to an applicant who desired to use certain garage premises for industrial purposes. The permission was subject to the condition "that the land shall be used for industrial purposes only until such date as may be declared by Order in Council or otherwise, as the date on which the present emergency shall be deemed to have ended and from that date the land, together with adjoining land, shall be used only as the site for a garage". The applicant is still using the premises for industrial purposes and nearby residents have complained that this user is causing them inconvenience, and the Council feel that in the interests of planning this user should now cease.

Your opinion is accordingly sought as to whether the Council can take any action other than under s. 26 of the 1947 Act to bring about the cessation of the present user.

The owner is not willing to make an application for continuation of planning permission as he contends that the period for which the original planning permission was given has not yet expired, and that his use of the premises is accordingly an authorised one. [J. A. S.]

ANSWER

The answer to this query really turns on the interpretation of the condition—as to whether the period of the "present emergency" has expired. If this period has not expired, it is clear that enforcement action will be able to be taken only on the eventual expiration of the period, under s. 76 (2) and s. 23 of the Act.

In my view, however, I feel that it was the intention of the planning authority to refer, in using the words " present emergency ", to the then existing war with Germany—no reference to any particular statute can be shown, and different " emergencies " have been used in different Acts. I think the reasoning, admittedly on different facts and in a different context, of *Re Cooper*, [1946] Ch. 109, can here be applied. A contravention of previous planning control thus occurred on May 8, 1945 (VE day).

In using the enforcement powers of the Act, the local planning authority should therefore first follow the procedure of the Building Restrictions (War-Time Contraventions) Act, 1946. The procedure will be put in motion more than four years after the contravention, but the planning authority will not now be met with the argument unsuccessfully used in *Kendall* v. *Robinson* (1949), 1 P. & C. R. 211, based on s. 23,—see *Higham* v. *Havant and Waterloo U. D. C.*, [1951] J. P. L. 68; 1 P. & C. R. 281. The procedural point raised in *Stamp* v. *Bognor Regis U. D. C.* (1949), 1 P. & C. R. 220, is also relevant here. [J. F. G.]

283. *Planning permission—further application for longer period permission.*

We have obtained a planning permission for one year for a change of use. We find this is unduly expensive from the point of view of development charge, and we think it would be cheaper to get a permanent permission. Can the local authority refuse to revoke or amend the permission obtained, which is in the terms applied for, and are there any means by which we can persuade them to do so? If it is revoked we should, of course, apply for a fresh permission for a longer period. [T.]

ANSWER

There seems to be no reason why the local planning authority should not consider a modification of the existing permission, but they could certainly not be compelled to do so, and considerable delay may result from the need to obtain the Minister's confirmation. I would suggest the applicant immediately makes a new application (for a longer period) under s. 14; if refused he will then be able to appeal to the Minister. There is no reason why more than one application covering the same development should not be made. [J. F. G.]

284. *Planning permission—injurious development on neighbouring land.*

The local planning authority approved a layout of a building estate, and on such layout the position of the house on each plot was shown in outline.

A bought a plot believing that the house on the adjoining plot, bought by B, would be erected as delineated in outline on the layout plan.

A's house was built substantially in the position shown on the layout plan, a slight variation being necessitated and permitted by reason of the contour of the land. B deposited plans for his house and received planning permission to erect it in a position which bore no relation to the outline on the layout plan, and which would enable him to overlook A's house and materially interfere with his privacy.

Officials of the local planning authority admit that they were in error in recommending B's site plan for acceptance by the authority.

In these circumstances can you please inform us :—

(a) Whether the local planning authority are at liberty to revoke the approval given to B ?

(b) Whether A has any claim against the authority for loss of privacy and deterioration in value of his property if B succeeds in building his house in accordance with the permission he at present holds ?

(c) Whether it is possible to charge the council with the expense of erecting a screen at least 20 feet high to ensure the privacy of the house on A's plot ? [B. B. S.]

Answer

(a) Yes, at any time before the building has been completed, by an order under s. 21 of the 1947 Act. (See also s. 22 of the Act.) This order requires confirmation by the Minister.

(b) No.

(c) No.

Two general observations can be made :—

1. There is no common law right to privacy and, therefore, no duty is imposed on B or the planning authority.

2. If there were such a right the local planning authority would still bear no responsibility to A. The essence of a planning decision is negative rather than positive. The planning authority merely renounce their right to take action

against the new building or new use. The obligation is on B to see that in carrying out the development he is not offending against the rights of others; the mere receipt of planning approval does not negative that duty. [R. P. C.]

285. *Planning permission and development charge — garages/car repair workshops.*

Premises comprise several blocks of lock-up garages, some of which are used as such and some as workshops and stores, with several large buildings used for car and lorry repairs of all descriptions, cellulose spraying shop and panel beating and welding shops.

(a) Can the whole, including the lock-up garages be considered in one curtilage for the purposes of the 10 per cent. tolerance and for change of use?

(b) Is the use industrial as a single unit or must it be sub-divided according to actual occupations, and, if so, how are the garages and yard spaces classified?

(c) Would the undertaking of complete car cellulosing bring that part of the works into Use Class VIII and how does that affect classification of the whole or extension of the use of that part? [N. & S.]

ANSWER

If parts of premises are in practice allocated to different uses the use of each is a matter of separate control—see para. 7 of the Third Schedule to the Act, and art. 3 (2) of the Use Classes Order.

The lock-up garages would seem to fall into Class X and the remainder of the premises in Class IV.

The question of enlargement can be partly answered by reference to s. 112 (2). The whole premises are used for the purposes of one undertaking and it follows that the enlargement would be free of development charge up to 10 per cent. of the aggregate cube of all the buildings (the undertaking would appear to be the combined one of repairing and garaging cars and it is assumed the lock-up garages remain substantially under the control of the undertakers).

The liability to development charge in respect of the use of the enlargement, however, would have to be considered under para. 7 of the Third Schedule, the application of which

(*Continued at p.* 115, *ante*)

THE JOURNAL of PLANNING LAW

Published by
SWEET & MAXWELL, LIMITED
2 & 3 CHANCERY LANE, W.C.2

On the First of Every Month
Subscription: £1 10s. 0d.

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"Planning Law" Notes

The Ministry of Local Government and Planning have published Circular No. 101, dated January 31, 1951, together with a memorandum (H.M.S.O., 2s.) on "The Control of Mineral Working". The two main purposes of the memorandum are to explain the various Acts and Regulations on the subject in a form which makes them both easily understood and readily accessible, and to give guidance to local planning authorities on how they should exercise their powers of control and on the problems of balancing the claims of agriculture and other important uses of the land against the need to develop the country's valuable mineral resources. It also suggests ways of ensuring that the damage done where mineral working does take place is reduced to a minimum.

The Transfer of Functions (Minister of Health and Minister of Local Government and Planning) (No. 1) Order, 1951 (SI 1951, No. 142) has been issued and is printed in full at p. 150, *post*.

Two more Designation Orders for National Parks—the Lake District and Snowdonia—have been submitted to the Minister of Local Government and Planning for confirmation. Copies of the Orders, together with maps showing the boundaries, will be on view in all local authority districts affected by the Orders, until March 17 and March 24, 1951, respectively.

A public local inquiry on the subject of the Peak District National Park is to be held at the Town Hall, Buxton, on March 6, 1951.

Ministry of Local Government and Planning Circular No. 1, "Advertisement Applications", dated February 5, 1951, has been issued calling for more informal contact between local authorities and advertisers with a view to the reduction in the number of appeals where planning permission has been refused or granted subject to conditions.

Dr. Potter contributes the following: The question has been raised whether, where part of a parcel of land in respect of which a claim for loss of development value has been made is conveyed together with an assignment of an agreed part of the development value, payment the interest on such agreed part should be assigned as from the appointed day or from the date of the conveyance. It seems clear that the assignment should be of the whole right to interest. A precedent for an assignment of part of a development value payment will be found in *Potter and Macintyre*, Precedents and Planning, p. 127.

The *Law Society's Gazette* for January, 1951 (at p. 22) states that the attention of the Council of the Law Society has been drawn to a flaw in s. 7 (2) of the Requisitioned Land and War Works Act, 1948, which provides for the adjustment of compensation rental for requisitioned land as assessed under s. 2 (1) (*a*) of the Compensation (Defence) Act, 1939. This occurs since s. 7 (2) of the 1948 Act does not provide that a "dead ripe" certificate issued under s. 80 of the Town and Country Planning Act, 1947, shall be taken into consideration in assessing the compensation rental.

The owner of requisitioned land in respect of which a s. 80 certificate has been issued is precluded from claiming compensation under Part VI of the Act of 1947, and since such land is, of course not available to its owner for the purpose of development so long as the requisition remains in force, he is unable to exploit the value of the s. 80 certificate.

Furthermore, he has not hitherto been able to ask for his compensation rental to be reconsidered by reference to the value of the land for development. But the *Law Society's Gazette* states that the Treasury have now recognised in principle that the effect of s. 7 (2) (*b*) of the 1948 Act is somewhat anomalous where a "dead ripe" certificate has been issued. It has been agreed in at least one particular instance, that the rental compensation may be assessed on the assumption that s. 7 (2) (*b*) allows regard to be had to the issue of the s. 80 certificate, and the Treasury have made it clear that the recognition of this principle is of general application.

The normal enforcement period in the Building Restrictions (War-Time Contraventions) Act, 1946, will expire on March 26, 1951. Thereafter, where development has taken place between September 3, 1939, and March 26, 1946, contrary to planning control, it will be treated as complying with such control unless enforcement proceedings have already been commenced. As to possible extension of the period, see p. 141, *post*.

A Practice Note of the Lands Tribunal is printed at p. 171, *post*. The reported decision which follows it also contains a statement of general guidance to valuers in preparing an assessment of compensation in a disputed case where there is a relevant statutable direction.

The Minister of Local Government and Planning explained in the House of Commons when moving the second reading of the Town and Country Planning Bill, that clause 1 of the Bill was necessary because the Government were advised that as the Act now stands, the rebuilding of a war-damaged building in its former shape where any part of the building remains standing is, under s. 12 (2) (*a*), deemed not to be development.

The same principle will, of course, apply to a building damaged in any other way, *e.g.*, by fire, and this will not be affected by the Bill.

In the ensuing debate (for an account of which see p. 160, *post*) one M.P. (Mr. Assheton) remarked that the Bill should have been called the Town and Country Planning (Amendment) Bill, and another name which had been suggested to him was the " Silkin (Ironing out of Bloomers) Bill ".

The Government have introduced the Mineral Workings Bill to ensure restoration of land after iron ore workings.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Journal. They should be sent to the MANAGING EDITOR, *Journal of Planning Law*, 3 CHANCERY LANE, LONDON, W.C.2. *Every attempt will be made to return drafts or unsuitable copy but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

Conveyancing under the Planning Acts

By Harold Potter, LL.D., Barrister-at-Law

Collateral Obligations

Although the validity of the " use " is the central feature of the conveyancing problems raised by the planning legislation, other matters may seriously affect the occupier of the land. Speaking generally these collateral obligations are matters which cannot be guarded against except before contract, because nearly all of them are registrable. In most cases, too, they are matters which may affect the owner or occupier at any time and, therefore, they have become one of the general hazards of land owning. The most obvious example is that of compulsory acquisition. The powers of compulsory acquisition " enjoyed " by public authorities of one kind and another are now very wide indeed. It is not merely a " planning matter ". Of course, many of these powers are of long standing. But the great change that has been introduced by the planning legislation is that compulsory acquisition was normally from the point of view of the landowner economically " a good thing ". Today the converse may be true and this particularly applies where the landowner has purchased the land himself for " development ". This may be illustrated from the recent decision in *Earl Fitzwilliam's Wentworth Estates Co.* v. *Minister of Town and Country Planning* (1950), 1 P. & C. R. 169, where the Central Land Board made a compulsory purchase order to acquire the land at " existing use " value because, as they contended, the only price at which it could otherwise be obtained was its value as developed, though the vendor would not pay the development charge. The " existing use " value appears to have been one-fifteenth of the value at which the vendor was prepared to sell the property. While this may be a very exceptional case it remains a fact that the prices usually paid for land today seem to be in excess of what would be the theoretical " existing use " value.

These collateral matters fall into groups which may be conveniently discussed together, because, as will be seen, they can affect the conveyancer in different ways.

There is one common feature, however, about most of these collateral matters, namely, the unsatisfactory position on a purchase at auction. They commonly require registration in one form or another, but it is unreasonable to expect every prospective bidder to search in the planning register and the local land charges register and he has no means normally of searching the Land Charges Register. This illustrates a crying need that matters so registered should be required to be disclosed prior to contract, but the present law seems to be the opposite. Of course, this matter is not peculiar to planning problems and they only give point to it. It is possible that the Court may take a different view from that expressed in *Re Forsey & Hollebone's Contract*, [1927] 2 Ch. 379, and in particular may refuse an order for specific performance where non-disclosure produces hardship. It may be difficult to resist the view that a matter requiring registration should be treated as an " incumbrance ", but if " use " is not a matter of title it may be hard to sustain the view that registered matters affecting it are incumbrances. Indeed, it is an example of the confusion that has been introduced into the position by planning restrictions that the possibility of restriction under a planning scheme was treated as not being an incumbrance notwithstanding that it was registered as a local land charge: *Re Forsey & Hollebone's Contract* (*supra*); while essentially matters registered under the Land Charges Act, 1925, are so regarded. Indeed, the judgments in that case appear to proceed on the lines that had the restriction become effective it might have been an incumbrance. The law on this point is no longer of significance because the restriction has become of general application, but it does illustrate the considerable doubt that must exist on the point with regard to all these obligations.

(i) *Notices and Orders affecting the actual use*

The continuance of the present or actual use of the land may be affected by:—

(a) Order revoking or modifying a planning permission: s. 21.

(b) Order directing the discontinuance of an existing use: s. 26.

Both these orders need to be confirmed by the Minister after consideration of objections made on notice and require to be registered as local land charges. They must be considered together, because *prima facie* they may operate to destroy the effect of any existing use whether or not granted by planning permission. S. 21 (3) limits the effect of the section to modification or revocation before the development has been carried out. S. 26 is general in its terms and includes the removal of a building; nor does it seem to exclude a use carried on under a planning permission. In both cases provision is made for compensation or, in appropriate circumstances, for purchase notice requiring the planning authority to acquire the land, see ss. 22, 27.

(c) Enforcement Notice under s. 23 or in the case of historic buildings under s. 30 (8).

This also requires to be registered as a local land charge, but it requires no special attention here since it goes to the root of the "existing use".

The two orders mentioned above fall very much into the class of the common hazards of land owning, and there is little the conveyancer can be expected to do about it. The following points do, however, require consideration.

A purchaser of undeveloped land sold with the benefit of a planning permission might reasonably require the contract to provide that if any order is made under either s. 21 or s. 26 prior to completion the purchaser shall have the right to rescind the contract.[1] *Prima facie* at least the clause is fair to the vendor who, after all, is entitled to compensation if he suffers loss and he clearly does not want the developed land, whereas the purchaser equally does require land for development of a particular kind.

Beyond this temporary provision it seems unreasonable to go, and save in the case of developed land bought specifically for a particular use, such a clause would seem unreasonable except in the special case first mentioned.

The position of the mortgagee is different. The provision for compensation makes it clear that the value of the security may be affected. At the same time any precise destination for the compensation, such as payment to the mortgagee, may be inconvenient and difficult to determine in advance. Provided that the mortgage contains a covenant to give notice to the mortgagee of any proposals for an order ([1948] J. P. L. 433) this should enable the mortgagee to make such arrangements with the mortgagor as the circumstances at the time require, and this covenant in one form or another appears now to be finding its way into the precedent books.

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[1] See Precedent, *post*, p. 135.

The problem as it affects leases is again different. Under both sections the compensation, if any (see ss. 22, 27), is payable to the persons interested in the land and not merely to the owner or occupier. Consequently, in a general way there is no ground for any special provision in the lease. Furthermore, the notice of proposal for an order must be served on the occupier as well as the owner, so that there should not be any essential difficulty particularly as there is a statutory duty to serve the notice on any other person whose interest may be affected. It should, however, be observed that owing to the peculiar rules concerning frustration in the case of a lease ([1950] J. P. L. 341) there may be exceptional circumstances, particularly in connection with business premises, where this matter should be taken into account. Clearly, for example, the proprietor of a fried fish business would be in a very difficult position if he remained saddled with the lease of a shop in which his business could no longer be carried on. So long as the lease is freely alienable this may not be a great hardship, but commonly leases of premises contain rather strict provisions concerning assignment.

Where, however, the lease contains a covenant for limited use, as is becoming increasingly common, it is clearly desirable for an express declaration dealing with the possibility. The alternatives seem to be to permit a change in the covenant or determination of the lease. Obviously this must be a matter for negotiation on the draft lease.[2]

(ii) *Orders restricting specific use*

There are three types of order that may operate much as a restrictive covenant against particular operations:—

(a) a "tree preservation" order: s. 28,
(b) a "building preservation" order: s. 29,
(c) inclusion in a list of historic buildings: s. 30.

In fact, these three orders have only a very limited application, particularly in the case of the last two. From the nature of things the number of buildings which can be of special architectural or historic interest can only be relatively few and any person dealing with the property would have knowledge from its character whether or not such an order was a possibility. The effect of the order under s. 29 is to prevent without consent of the planning authority the execution of works of any kind specified in the order with the usual statutory provisions for reinstatement and enforcement in the event of contravention. An owner who executes or causes or permits the execution of any contravening works, is also liable to a fine not exceeding £100: s. 29 (5). It would, therefore, seem that speaking generally the conveyancing importance of such an order will *normally* arise in the case of a lease of such a building. The lessee should covenant not to execute or cause or permit to be executed any works specified in the order without the consent of the planning authority.[3] When a building is included in a list of historic buildings under s. 30 of the Act the position is not dissimilar, though the provisions are not identical because they do not directly restrict the execution of works but only require two months' notice to the authority. Presumably after receipt of notice the authority could proceed to make a building preservation order.

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[2] See Precedent, *post*, p. 135.

Tree preservation orders are imposed for the preservation of amenity, and may be either for the preservation of trees or woodland. Obviously such orders may be of wider application than those relating to buildings and, if existing, may have a more general effect upon any plans for development. At the same time the only penalty is a fine of £50 unless the "offence" is continuing when it is 40s. for every day on which the offence is so continued. It is by no means obvious whether "clearing" a woodland would constitute a single offence and whether the woodland would have to be replanted, since the Act seems only to contemplate replanting when the felling has been done in accordance with permission given under the order. The order will itself specify the trees, etc., by reference to a map so that so long as search is made any order in existence will be discovered. As local land charge registers are usually searched before contract this problem will only affect purchasers by auction, and as inspection of the land will disclose the existence of trees which may be affected it does not present much difficulty as between vendor and purchaser. Even as between lessor and lessee it does not appear to be material in drafting the lease, since it is the person who contravenes the order who is responsible.

It may, however, be convenient to point out that in advising a prospective purchaser or lessee, who contemplates development, it must be remembered that the non-existence of a tree preservation order does not mean that when the time comes a tree preservation order may not have come into existence. This is one of the "natural hazards" of development, but there is the consolation of possible compensation: s. 28 (1) (*d*).

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[3] See Precedent, *post*, p. 136.

(iii) *Development Charge for contravening use*

Under s. 74 the Central Land Board can assess a penal development charge for a contravening use. We have already discussed the problem of the effect of such charge ([1950] J. P. L. 881), and we are here only concerned with the fact that it may be charged on the interest of any person in the land: s. 74 (2). When so charged it presumably becomes an incumbrance analogous to any other security for the payment of money, because the Central Land Board have the powers of a mortgagee by deed: s. 74 (5). Nevertheless, the charge must be registered as a land charge Class A under the Land Charges Act, 1925. So far, therefore, as an existing charge created in pursuance of the Act is charged upon the interest of any vendor, mortgagor, or lessor, the position does not differ substantially from that of any other mortgage and consequently calls for no special attention here from the conveyancing aspect. If any planning contravention has been committed prior to a disposition that might subsequently give rise to the assessment of a development charge under this section, it does not seem to be likely that the charge would be charged against the interest of any innocent party, but in any event this possibility is one of the reasons for ensuring that the "use" is adequately investigated and that covenants for title cover planning contraventions. Hence this possibility also calls for no special comment in this place.

There is the further possibility that a lessee or a mortgagor could embarrass the lessor or mortgagee by contraventions resulting in an assessment after the date of the lease or mortgage. It must be remembered that such an assessment may be double the value of the development charge payable if a planning permission had been granted. This aspect of the matter is dealt with by the insertion of covenants against planning contraventions ([1950] J. P. L. 335, 340). It is, of course, a matter that may give rise to some difficult questions because the problem of priority in the case of mortgages and of the effect of surrender in the case of leases appears to be obscure, while covenants too strictly drawn may be unfair to mortgagors and lessees. Inadvertent planning contraventions are, no doubt, fairly frequent and in most cases immaterial.

Consequently, any covenant should contain a proviso rendering it harmless unless there is substantial danger to the mortgagee's or lessor's interest.

It may finally be pointed out that in the comparatively rare cases in which a development charge assessed under a planning permission is payable by instalments this may also be charged on the land by a legal or equitable charge: s. 71 (2). Such a charge on the land must follow the same principles as an ordinary mortgage and, therefore, calls for no further comment.

[*To be continued.*]

PRECEDENTS

Rescission or Modification or Discontinuance of Use

If the planning permission affecting the land hereby contracted to be sold shall be revoked or modified or any use thereunder authorised shall be discontinued by the planning authority under or by virtue of the Town and Country Planning Act 1947 prior to completion of the purchase the purchaser shall on serving —— days notice on the vendor have the right to rescind this contract and recover his deposit etc.

Declaration for Change of Use Where a Covenant for Limited User

It is hereby declared that if by any order or direction made under or by virtue of the Town and Country Planning Act 1947 the premises hereby demised cannot lawfully be used for the purposes declared in the covenant in that behalf on the part of the lessee [the said premises shall be used for such one or more of the purposes as shall be permitted by the said Act] *or* [the lessee may upon paying all the rent and performing and observing all the covenants on his part herein contained give —— months notice in writing of his desire to determine this lease and at the expiration of such notice this lease and everything herein contained shall cease and be void without prejudice to any claim by either party against the other in respect of any antecedent breach of any covenant or condition therein contained].

Covenant to Preserve Buildings of Architectural or Historic Interest

The lessee hereby covenants with the lessor that during the continuance of this lease the lessee will not without the written consent of the local planning authority [and of the lessor] execute or cause or permit to be executed on the demised premises or any part thereof works of any description specified in a Building Preservation Order dated the —— day of —— .

Service Roads and Circular No. 88

By J. K. Boynton, M.C., LL.B., Solicitor

(1) In Circular No. 88, dated May 29, 1950, the Minister of Town and Country Planning issued some general guidance on development alongside trunk and classified roads. The circular was stated to be necessary because " in the past these difficulties (of restricting access) were frequently overcome by the imposition of a condition under the Restriction of Ribbon Development Act, 1935, to the effect that direct access to the road should be discontinued and a service road constructed by the developer if the extent of the development on adjacent land were to make such a course desirable in the Highway Authority's view. This condition cannot be imposed under the Town and Country Planning Act, 1947—largely because of the uncertainty of the requirement ".

(2) Whatever the merits of the guidance in Circular No. 88, there is no doubt that the practice under the Act of 1935 was a very convenient one, and widely adopted. It certainly permitted a degree of flexibility in handling applications on isolated sites or where adjoining land was held by different owners, which the application of the principles in Circular No. 88 would not permit. The previous practice was sanctioned by the Ministry of Transport, and most local authorities imposed conditions of a sort approved by the Minister on appeal (see the blue book of *Review of Decisions* given by the Minister of Transport under the Restriction of Ribbon Development Act, 1935, upon appeals to him, up to June 30, 1937, p. 7, para. 12, and *Review Decisions* 17, 28 & 37, on pp. 32, 45 & 56 respectively (S.O. Code No. 55–182)).

(3) Perhaps the immediate reaction to Circular No. 88 of the person who remembers the Act of 1935 is most likely to be " Why should I learn new tricks. Why can't I go on doing what has worked well enough in the past ? " Because, says the Minister, of the uncertainty of the requirement. The question is nevertheless a pertinent one. The Act of 1935, s. 7 (1), provided that " any consent which the highway authority have power to give under section 1 or section 2 of this Act may be given subject to such conditions as the authority think fit to impose ". Then follow a number of provisos which basically provide that any consent under the Act is not to be unreasonably withheld nor to be made subject to unreasonable conditions. The Act of 1947, s. 14, seems

to go further because the planning authority "may grant permission either unconditionally or subject to such conditions as they think fit". At first glance, therefore, it is hard to see how one could say that what was done under the earlier Act cannot legally be done under the later.

(4) In deciding on this point, it has to be borne in mind that s. 14 (2) (*b*) of the Act of 1947 provides that "without prejudice to the generality of the foregoing subsection (s. 14 (1)) conditions may be imposed . . . for . . . the discontinuance of any use of land . . . at the expiration of a specified period and any permission granted subject to any such condition . . . is in this Act referred to as a permission granted for a limited period only". Quite clearly the old type of condition giving power to the highway authority to call for a service road in the future was in effect a *temporary* permission for direct access to the trunk or classified road. Therefore it can be argued with considerable force that under the Act of 1947 some period must be mentioned or the highway authority will find themselves unable to close the temporary access which they have granted. At any rate, it is obviously advisable to follow the pattern indicated in s. 14 (2) (*b*).

It is true that the Minister has granted applications limited to a particular applicant and that these are in reality permissions for an indefinite period, *i.e.*, the life of the applicant at most. Nevertheless in other contexts a "specified period" would not be a period depending upon such an uncertain thing as the growth of development on adjacent land and the highway authority being satisfied as to the necessity for a service road.

(5) This may at first sight appear but another way of putting the statement in the Circular that the old type of condition under the Restriction of Ribbon Development is too uncertain to be imposed under the Act of 1947. It will be realised at once, however, that if the reasoning in the previous paragraph is correct, substantially the same result can be achieved today as under the old condition by specifying a period of years for the use of the temporary access. If at the end of that period, there has been little or no adjoining development, direct access can be allowed for a further limited period. The simplest and most watertight condition is one which permits access to the trunk or classified road and then provides for its discontinuance and closing up at the end of so many years. It is suggested, however, that the type

of conditions set out at the end of these notes (and based on the conditions approved by the Minister of Transport under the Act of 1935) would also be effective. Although the purist might object that the discontinuance of temporary access is to follow on something indefinite—the making up of the service road—substantially the condition is certain in form, and should achieve its purpose.

In view of the acknowledged difficulty of dealing with applications of the type dealt with in Circular No. 88 it seems worthwhile to draw attention to the possibility of imposing conditions of the sort mentioned in this article. The practice under the Act of 1935 had much to commend it. It seems a pity to jettison it entirely when with slight alterations it could be made to fit the new legislation.

Access Conditions

1. The means of access shall be [*here describe*] and shall be permitted for a period of .... years only.
2. At the expiration of the period mentioned the owner shall at his own expense and to the reasonable satisfaction of the highway authority construct so much of the service road as defined below as shall cross his land.

   Provided that there shall be no obligation on the appellant to construct the said service road under this condition unless and until the highway authority give to him an undertaking in writing to adopt the service road when completed as a highway repairable by the inhabitants at large and to connect it to the road at a point not more than 220 yards[1] from the means of access.
3. The service road referred to in these conditions shall be a service road parallel to and not less than .... ft. from the middle of the road, and having an overall width not exceeding .... ft. comprising a carriageway (not exceeding .... ft. in width) and footpath, and in all other respects constructed according to the reasonable specification of the highway authority.
4. Upon the service road being completed and adopted as aforesaid the means of access provided by the said service road shall be in substitution for any other means of access constructed under this consent and such other means of access shall thereupon be closed.

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[1] This was an arbitrary figure fixed by the Ministry of Transport on the basis that one access point for each quarter-mile was the right standard to adopt.

More Miscellaneous Comments

By W. A. Leach, F.R.I.C.S.

Existing Use Value

The term "existing use value" has gained a wide currency, but unfortunately is not confined to any one conception of value.

"Restricted value" is a special value of an interest as at a particular past date; it is subject to special rules and should never be called the existing use value.

"Refusal value" is the free market value of a hypothetical fee simple interest with vacant possession and unencumbered with any other interests. It assumes that the actual owner in fee simple does not own the land. It is a hypothetical existing use value.

"Compulsory purchase value" is the value of an interest in land subject to certain special rules which eliminate some aspects of market value. This is a value for the existing use on the assumption that no permission would be granted for any other use, whereas normal sales are based on value for the existing use on the basis that permission might be granted for another use and that a development charge might be payable.

The term "existing use value" is not in the Act, has no exact meaning, and should be discarded, despite its employment in the "Governing Principle" in the Development Charge Regulations (SI 1948, No. 1187). There are four distinct values of land as subject to the limitations of the 1947 Act: "restricted value", "refusal value", "compulsory purchase value", and "market value for the existing use". In addition we have "unrestricted value", "consent value" and "market value with permission". Surely it is better to use the term appropriate to the particular case, rather than the nebulous expression "existing use value"?

Development Value: Contravening Uses

A requisitioning use instituted before July 1, 1948, could not contravene planning control under legislation prior to the 1947 Act since the Crown was not bound thereby, but such a use can clearly be a contravening use within s. 75 (9) of the

1947 Act and can be the subject of an enforcement notice under s. 23 (subject to s. 87 (3) so long as there is a Crown interest in the land). Action is also possible under the Building Restrictions (War-Time Contraventions) Act, 1946, if the contravention occurred during the " war period ", *i.e.*, between September 3, 1939, and March 25, 1946.

Under the 1946 Act an enforcement notice under s. 75 of the 1947 Act may be served at any time within five years of the end of the " war period ", *i.e.*, before March 26, 1951, in respect of any war period contravention (ss. 3, 4, 7 (5) of the 1946 Act and s. 75 (2) (*b*) of the 1947 Act) except where there is an interest in, or right to possession of, the land concerned vested in the Crown, when the period during which an enforcement notice may not be served by reason of that interest or possession is to be disregarded in computing the period of five years from the end of the " war period ". In short, if there is or has been a Crown interest between March 26, 1946, and March 26, 1951, the period for serving an enforcement notice may be extended (ss. 4, 7 (5), 7 (6) of the 1946 Act, and the proviso to s. 75 (1) of the 1947 Act). If no notice is served within the prescribed period under the 1946 Act the development is regularised (s. 4), and the power to serve an enforcement notice lapses under both Acts.

Although s. 75 of the 1947 Act refers back to s. 23, under which a notice may not be served more than four years after the development in breach of planning control was carried out, it was decided in *Higham* v. *Havant and Waterloo U. D. C.* (1950), 1 P. & C. R. 281 that an enforcement notice may be served under s. 75 within three years of July 1, 1948, notwithstanding that the contravening works were carried out or use commenced more than four years prior to the date of the notice, the period of three years under s. 75 being in substitution for the period under s. 23 and not an additional limitation to the power under the earlier section.

It will be noted that s. 75 (9) would not comprehend a breach of condition of permission relative to the use of land if the breach did not amount to a different use. Breach of a condition would be a matter for consideration under s. 76 (which carries forward such conditions as if imposed under Part III of the Act). Possibly an enforcement notice could be served under s. 23 (as proposed to be amended by the new Bill) within four years of the breach occurring, but it should not be overlooked that in terms s. 23 applies only to a development carried out after July 1, 1948. It is, therefore, only by implication from the purpose of s. 76 (1) that the power to serve an enforcement notice for breach of a pre-1947 Act condition can exist. On the other hand, there could have been no contravention within Part III before July 1, 1948 (when the condition would have come into effect as a Part III condition), so that if s. 23 does apply, time for service of a notice would seem to run from the appointed day.

The position on July 1, 1948, was that every use on that day in contravention of planning control as defined in s. 75 (9) (or the similar definition in s. 7 (3) of the 1946 Act) was liable to notice of determination: but where since July 1, 1948, a contravention during the " war period " has been regularised or is deemed to be regularised by s. 4 of the 1946 Act or any contravention has been regularised under s. 75 (4) of the 1947 Act, no claim under Part VI of the 1947 Act could morally be sustained in respect of that use and probably none would be admitted. An incident of ownership available to a purchaser on the appointed day was the right to seek regularisation of the use and if this has been achieved it is evidence of the value of the right. (See s. 75 (7), also [1949] J. P. L. 388 and [1950] J. P. L. 34 as to development charge: the C. L. B. statements are not concessionary.)

It is to be noted that as from March 21, 1933, an application for bye-law consent was deemed to be an application for planning permission under the 1932 Act, and until July 22, 1943 (when the Town and Country Planning Act, 1943, reversed the position) a permission was deemed to be granted if no decision was given within two months of the application therefor.

Also under the 1932 Act a use ceased to be an " existing use " if discontinued for eighteen months and a building ceased to be an " existing building " if not rebuilt within two years; thereafter refusal of permission for the use or to rebuild would have given no right to compensation. But where these circumstances arose during or since the " war period " special provision was made by s. 45 of the Town and Country Planning Act, 1944. " War period " in this case means September 3, 1939 to February 24, 1946.

These provisions appear, however, to be superseded by the 1947 Act; see ss. 12 (5), 61 (2) (*a*), 69 (2) (*a*), and para. 1 of Sched. 3 of the 1947 Act, and the present test is whether the use was abandoned or the building destroyed or demolished before January 7, 1937.

Unfinished buildings—Section 78

The decision reported at [1950] J. P. L. 898 is interesting, as works of drain laying were considered by the Minister not to be works for the erection of a building under s. 78 (1).

There is insufficient information in the report to consider it on its merits. My own view would be that if the drainage works were carried out at the time that the first pair of houses were erected simply as a matter of convenience in view of the possibility, or even probability, of further houses being erected, they were not works for the erection of a building, for that expression would seem to require that the works were carried out with the erection of a building definitely in view. If, however, buildings were intended as certainties and not probabilities, a mere hiatus in the proceedings would not make the works any the less works for the erection of a building. "Works for the erection of a building" is a loose and wide term and may include everything done, at least on the site, in the course of erecting a building, from and including clearing away the undergrowth. There is an alternative view that as it must have been possible before the appointed day to have completed the works in accordance with planning control at that time, the works referred to in s. 78 (1) must be works which were then subject to planning control. There is, however, little to justify such a reading and it seems a fair contention that all works must be included and that so far as these were not subject to planning control, their completion would not contravene the requirements as to completion in conformity with such control. As to the works being on the site, it is not an impossible reading that the making up off the site of prefabricated parts *especially* for the building falls within works for the erection (as defined) of a building, *e.g.*, it is arguable that the section would cover a case in which there was a planning permission for a new shop front late in 1939, and the front was made up at the works early in 1940 but not installed in view of air raids, and after 1945 not installed by reason of no licence being procurable.

Compulsory Purchase for the Private Practitioner—III

By J. F. Garner, ll.m., Solicitor

It remains in the third article of this series[1] to discuss the various special types of compulsory acquisition, being variations, for one reason or another, from the normal procedure described in the two previous articles.

(A) *Special Types of Land.*

If the land to be acquired falls within one of the special categories set out below, the Acquisition of Land (Authorisation Procedure) Act, 1946, requires " special parliamentary procedure " to be observed in relation thereto in the making and confirmation of the compulsory purchase order. These categories are as follows (see s. 1 (2) of the Act of 1946):

- (i) Property of a local authority, or of a statutory undertaking acquired for the purposes of the undertaking;
- (ii) Land forming part of a common (an expression which includes any town or village green), open space (land laid out as a public garden, etc., or a disused burial ground), fuel or field garden allotment (*i.e.*, an allotment set out as such under an Inclosure Act), or land held inalienably by the National Trust (under the National Trust Acts of 1907 or 1939);
- (iii) Land being, or being the site of, an ancient monument (as defined by the Ancient Monuments Acts, 1913 and 1931), or other object of archæological interest.

In any of these cases, unless the appropriate Minister has given a certificate as provided for in Part III of the First Schedule to the Act of 1946, the compulsory purchase order cannot be confirmed or come into operation until " special parliamentary procedure ", as prescribed by the Statutory Orders (Special Procedure) Act, 1945, has been observed in connection therewith. This means in effect that the draft order has to be laid before Parliament and an opportunity given for petitions to be presented against it; if any petitions are so presented, the order is considered by a joint committee of both Houses, before which the proceedings are quasi-judicial in nature, as in the case of proceedings on a Private Bill.

In other respects, however, compulsory acquisitions of such land, follow the " normal " procedure before described.

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[1] For the first and second articles see [1951] J. P. L. 19, 92.

(B) *Expedited Authorisation Procedure.*

In certain circumstances, the acquiring authority may be authorised to acquire the land by a more expeditious procedure than that before explained; in other words, the compulsory purchase order becomes operative more quickly than is usual under the ordinary procedure.

This special procedure originated in the Housing (Temporary Accommodation) Act, 1944, but that Act expired in this respect at the end of 1945; the special powers were, however, re-introduced on a wider basis in s. 2 of the Act of 1946 under which the Minister may authorise the acquiring authority to acquire the land by " authorisation in writing ", in lieu of a formal compulsory purchase order. This section will, however, lapse on April 18, 1951 (see announcement noted at [1951] J. P. L. 2), and it is not proposed to discuss the details of the procedure under it.

(C) *Expedited Completion.*

Where a local authority exercise their power given by s. 38 of the Town and Country Planning Act, 1947. to acquire compulsorily land which has been designated for compulsory acquisition in the development plan (or in certain other circumstances before a development plan for the area has become operative: see s. 38 (2)), they may include in the compulsory purchase order which they submit for confirmation to the Minister of Town and Country Planning, an application for a declaration providing for " expedited completion " of the acquisition. Such a direction will be included in the order by the Minister only where he is satisfied " that it is urgently necessary in the public interest to empower that authority to enter on the whole or any part of the land to which the order relates and secure its vesting in them before the expiration of the time which would be required for the service of notices to treat " (Act of 1947, s. 39 (1)).

Special forms of notice of the intention to apply for the confirmation of a compulsory purchase order including such a direction must be used (see Forms 6 and 7 scheduled to the Compulsory Purchase of Land Regulations, 1949), and therefore any person affected will have an opportunity of making representations (in writing) to the confirming Minister on the point of the inclusion of such a provision or, of course, on the principle of acquisition of the land. So far as a landowner is concerned, he will not normally be greatly concerned, unless he is likely to sustain substantially greater hardship by reason of losing his land more quickly than would have been the case had the normal compulsory purchase procedure been observed.

Once a compulsory purchase order containing such a direction has been confirmed, it must be registered in the local land charges register maintained by the county borough or county district council in which the land is situate, although it is by no means clear that a compulsory purchase order which has not been registered is unenforceable against a purchaser for value. There is no need for the acquiring authority to serve any notices to treat, as these are deemed to have been served on all persons affected, but notice of the confirmation of the order must be given and served in the usual manner (a special form must be used—Form 9 scheduled to the 1949 Regulations). When this notice has been published, the acquiring authority may execute a declaration stating their intention to enter on and take possession of the land, and stating that the land shall vest in the authority, on the expiration of a stated period (not less than 14 days from the service of a notice to that effect on every occupier of the land, or other person who has advised the authority of his interest); see Town and Country Planning Act, 1944, Sixth Schedule, as re-enacted in the Eleventh Schedule to the Act of 1947.

On the expiration of this stated period, the land (*i.e.*, apparently, all interests therein) vests in the acquiring authority without any conveyance or other document being executed, and the authority are liable to pay compensation, to be assessed in accordance with the principles applicable to ordinary cases of compulsory acquisition. Any question of disputed compensation arising thereunder may be referred to the Lands Tribunal at any time after 30 days from the date on which the notice to treat is deemed to have been served (*i.e.*, the date on which the order is registered in the local land charges register), and not being more than six years from the time when the claimant first knew ("or could reasonably be expected to have known") of the vesting of the land in the acquiring authority (see 1944 Act, Sixth Schedule, paras. 1 (2) and 6).

(D) *Acquisition of Designated Land.*

The procedure applicable to the compulsory acquisition of land which has been designated as being subject to compulsory acquisition in a development plan confirmed under Part II of the 1947 Act, or which is covered by s. 4 (1) of the New Towns

Act, 1946, and is being acquired by a new town development corporation, is in all major respects the same as that applicable to " normal " cases, as before explained. The authorisation in writing procedure (see para. (B) above) may be used by a development corporation at any time within two years from the designation of the site of the new town. Any order under this heading must be registered in the relevant local land charges register.

Further, in the case of an acquisition of land designated by a confirmed development plan as being subject to compulsory acquisition, the confirming authority may disregard any objection to the order which in the opinion of the Minister " amounts in substance to an objection to the provisions of the development plan defining the proposed use of that or any other land " (1947 Act, s. 45 (1)).

(E) *Compulsory Acquisition by Government Departments.*

Acquisitions by some Departments (especially the Minister of Transport) are regulated by the Act of 1946, the variations from the " normal " procedure being covered by Part II of the First Schedule to the Act. The order authorising the Department to acquire must first be prepared in draft, and the draft advertised and notice thereof served on the persons interested, in the same manner as is required for a compulsory purchase order prior to confirmation. Persons affected will be able to make representations, and the remainder of the normal procedure will apply, including the duty of the Department concerned to consider representations received, and hold either a public local inquiry or an informal hearing.

(F) *Purchase Notices.*

Strictly speaking, a purchase notice served under s. 19 of the Town and Country Planning Act, 1947, sets in motion, not a compulsory purchase in the ordinary sense, but a compulsory acquisition where the compulsion is exerted against an unwilling acquiring authority. Where a notice has been properly served, within the powers of the section, and confirmed by the Minister of Town and Country Planning (after a public local inquiry, if he considers this to be necessary: see s. 104 of the Act), the local authority concerned are to be deemed to be authorised to acquire the land in question compulsorily, and to have served a notice to treat in respect thereof, on such date as the Minister may direct.

This deemed notice to treat may not be withdrawn, and the acquiring authority must proceed with the acquisition, and pay compensation for the land, in the normal manner as for any other compulsory acquisition.

(G) *Special Acquisitions.*

Generally speaking, the Acquisition of Land (Authorisation Procedure) Act, 1946, applies to all compulsory acquisitions by local authorities and development corporations, and by some Government Departments. The Act does not, however, apply in the following cases:

(a) *Housing Act*, 1936, *Part III*. Acquisitions for the purposes of this Part of this Act (acquisitions for other housing purposes *are* governed by the 1946 Act)—*i.e.*, for " clearance and re-development "—are regulated by a special authorisation procedure set out in the First Schedule to the Housing Act, 1936. This special procedure is not, however, greatly dissimilar from that of the 1946 Act, provision being made for notices (see Housing Acts (Form of Orders and Notices) Regulations, 1937, S. R. & O. 1937, No. 78, as amended by SI 1950, No. 363), public local inquiries, confirmation of the Order by the Minister of Health, and challenge of the Order in the High Court.

(b) *Light Railways Acts*, 1896 *and* 1912. These statutes are very rarely used at the present time, but they are expressly excluded from the procedure of the 1946 Act; compulsory acquisitions can be effected thereunder only by provisional order, confirmed by both Houses of Parliament.

(c) *Government Departments*. Government Departments generally, especially the Service Departments, acting under the Defence Acts or the Military Lands Acts, etc., are exempt from the 1946 Act procedure. Each statute prescribes its own procedure, which cannot be summarised here, but practitioners should be careful not to overlook the provisions of the Requisitioned Land and War Works Acts, 1945 and 1948, which often substantially affect the provisions of the earlier statutes in this matter.

A schedule of the statutes conferring powers of compulsory acquisition of land to which the Act of 1946 does not apply, will be found in Volume II of the *Encyclopædia of Planning, Compulsory Purchase and Compensation*, edited by R. D. Stewart-Brown.

Progress of Development Plans

(*Continued from p. 97, ante.*)

6. Cheshire County Council (Hoole Urban District and parts of Chester Rural District).

Submitted to Minister: Jan. 9, 1951.
(London Gazette, Jan. 12, 1951.)
Local inquiry: No date fixed.

MINISTRY OF TOWN AND COUNTRY PLANNING CIRCULARS

[*Continued from* [1951] J. P. L. 29]

Circular No. 101, dated January 31, 1951. Memorandum on the Control of Mineral Working. [4*d.*]

MINISTRY OF LOCAL GOVERNMENT AND PLANNING CIRCULARS

Circular No. 1, dated February 5, 1951. Advertisements Applications. [2*d.*]

Statutory Instruments

Transfer of Functions (Minister of Health and Minister of Local Government and Planning) (No. 1) Order, 1951

(SI 1951, No. 142)

Made - - - -	*29th January*, 1951
Laid before Parliament -	*29th January*, 1951
Coming into Operation -	*30th January*, 1951

At the Court at Buckingham Palace, the 29th day of January, 1951

Present

The King's Most Excellent Majesty in Council

His Majesty, in pursuance of the Ministers of the Crown (Transfer of Functions) Act, 1946,[1] is pleased, by and with the advice of His Privy Council to order, and it is hereby ordered, as follows:—

1.—(1) This Order may be cited as the Transfer of Functions (Minister of Health and Minister of Local Government and Planning) (No. 1) Order, 1951.

(2) The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

(3) This Order shall come into operation on the thirtieth day of January, nineteen hundred and fifty-one.

2.—(1) The style and title of the Minister of Town and Country Planning shall be changed to " the Minister of Local Government and Planning."

(2) The said new style and title shall be substituted for the former in the Minister of Town and Country Planning Act, 1943,[2] except in section twelve of that Act (which specifies the short title thereof), in all other enactments relating to the said Minister, and in all instruments (other than this Order), contracts and legal proceedings made or commenced before the coming into operation of this Order which refer to the said Minister.

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[1] 9 & 10 Geo. 6, c. 31.

[2] 6 & 7 Geo. 6, c. 5.

3.—(1) There are hereby transferred to the Minister of Local Government and Planning the functions of the Minister of Health under the enactments specified in Part I of the Schedule to this Order, except the functions specified in Part II of that Schedule.

(2) In the Schedule to this Order the said excepted functions are referred to as "retained Health functions", and the expression "Health matters" means matters as to which retained Health functions are exercisable.

4.—(1) The Minister of Local Government and Planning shall be a competent authority for the purposes of Regulations 50, 50A, 51, 53, 54A, 55, 55AA, 55AB, 77 and 85 of the Defence (General) Regulations, 1939, except for the purposes of the application of those Regulations respectively to Scotland or to Northern Ireland.

(2) In Regulations 50A, 56, 68AA and 68CA of the Defence (General) Regulations, 1939, references to the Minister of Local Government and Planning shall be substituted for the references therein to the Minister of Health.

(3) In Part I of the Sixth Schedule to the Defence (General) Regulations, 1939, references to the Minister of Local Government and Planning shall be substituted for the references to the Minister of Health in paragraph 1 thereof and in sub-paragraphs (*c*) and (*e*) of paragraph 6 thereof, and the following paragraph shall be inserted at the end of that Part, that is to say:—

"15. The discharge by a local health authority of any of their functions under Part III of the National Health Service Act, 1946.[3]	The Minister of Health"

5.—(1) The Minister of Local Government and Planning shall be the appropriate Minister—

(*a*) for the purposes of the Acquisition of Land (Authorisation Procedure) Act, 1946,[4] in relation to an undertaking for the supply of water; and

(*b*) for the purposes of the Town and Country Planning Act, 1944,[5] the New Towns Act, 1946,[6] the Town and Country Planning Act, 1947,[7] and the National Parks and Access to the Countryside Act, 1949,[8] in relation to such an undertaking and to statutory undertakers carrying on such an undertaking;

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[3] 9 & 10 Geo. 6, c. 81.

[4] 9 & 10 Geo. 6, c. 49.

[5] 7 & 8 Geo. 6, c. 47.

[6] 9 & 10 Geo. 6, c. 68.

[7] 10 & 11 Geo. 6, c. 51.

[8] 12, 13 & 14 Geo. 6, c. 97.

and accordingly references to that Minister shall be substituted for the references to the Minister of Health in the definition of "appropriate Minister" in section eight of the Acquisition of Land (Authorisation Procedure) Act, 1946, in section thirteen of the Town and Country Planning Act, 1944, as applied by the New Towns Act, 1946, and in section one hundred and nineteen of the Town and Country Planning Act, 1947.

(2) In the construction and for the purposes of any enactment (other than an enactment contained in the Ministers of the Crown Act, 1937,[9] regulation, byelaw, judgment, award, order, deed, contract, certificate or other document passed or made before the coming into operation of this Order, any reference to, or which is to be construed as a reference to, the Minister of Health or his officers or department shall, so far only as may be necessary for or in consequence of the transfer of functions effected by this Order, be construed as a reference to the Minister of Local Government and Planning or his officers or department.

(3) The transfer of functions effected by this Order shall not prejudice the operation of any regulation, order, appointment, determination, direction, instruction, approval, consent, requirement, authorisation or other thing made, given or done by the Minister of Health in relation to the functions transferred by this Order and before the coming into operation thereof, but any such matter shall, if then in force, continue in force to the like extent and subject to the like provisions as if it had been duly made, given or done by the Minister of Local Government and Planning.

(4) Anything commenced before the coming into operation of this Order by or under the authority of the Minister of Health may, so far as it relates to any functions transferred by this Order, be carried on or completed by or under the authority of the Minister of Local Government and Planning.

(5) Where at the coming into operation of this Order any legal proceeding is pending to which the Minister of Health is a party and the proceeding has reference to any of the functions transferred by this Order, the Minister of Local Government and Planning shall be substituted in the proceeding for the Minister of Health, and the proceeding shall not abate by reason of the substitution.

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[9] 1 Edw. 8 & 1 Geo. 6., c. 38.

(6) There are hereby transferred to the Minister of Local Government and Planning all property and rights held or enjoyed by the Minister of Health immediately before the coming into operation of this Order in connection with any of the functions thereby transferred, and all liabilities then incumbent on the Minister of Health in connection with any of those functions.

6. The charges coming in course of payment during the period beginning with the coming into operation of this Order and ending with the thirty-first day of March, nineteen hundred and fifty-one, of the services to which functions transferred by this Order appertain shall be defrayed as if—

(*a*) those functions had remained functions of the Minister of Health; and

(*b*) anything done by or under the authority of the Minister of Local Government and Planning in the exercise of those functions had been done by or under the authority of the Minister of Health; and

(*c*) any sums paid to the Minister of Local Government and Planning by virtue of the transfer of those functions had been paid to the Minister of Health;

and the appropriation accounts of the expenditure of grants appropriated for the services and purposes expressed in Votes 1 to 4 and 12 mentioned in Part 12 of Schedule (B) to the Appropriation Act, 1950,[10] or in any vote supplementary to any of those votes, shall be prepared, framed and rendered accordingly.

SCHEDULE

PART I

ENACTMENTS CONFERRING FUNCTIONS TRANSFERRED

Local Government, and rating and valuation:

The Local Government Act, 1933 (23 & 24 Geo. 5. c. 51).
The London Government Act, 1939 (2 & 3 Geo. 6. c. 40).
The Local Government Act, 1948 (11 & 12 Geo. 6. c. 26).

The Rating and Valuation Acts, 1925 to 1940.
The Rating and Valuation (Metropolis) Acts, 1869 to 1940.

The Local Government Act, 1888 (51 & 52 Vict. c. 41).
The Local Government Act, 1894 (56 & 57 Vict. c. 73).
The Local Authorities (Treasury Powers) Act, 1906 (6 Edw. 7. c. 33).

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[10] 14 Geo. 6, c. 16.

The Local Government (Emergency Provisions) Act, 1916 (6 & 7 Geo. 5. c. 12).
The War Memorials (Local Authorities' Powers) Act, 1923 (13 & 14 Geo. 5. c. 18).
The Local Government Act, 1929 (19 & 20 Geo. 5. c. 17).

Section fifteen of the Police Act, 1946 (9 & 10 Geo. 6. c. 46).
Section two of the Civic Restaurants Act, 1947 (10 & 11 Geo. 6. c. 22).
Section three of the Fire Services Act, 1947 (10 & 11 Geo. 6. c. 41).
The Electricity Act, 1947 (10 & 11 Geo. 6. c. 54).
The Gas Act, 1948 (11 & 12 Geo. 6. c. 67).

Public health:

The Public Health Act, 1936 (26 Geo. 5. & 1 Edw. 8. c. 49).
The Public Health (London) Act, 1936 (26 Geo. 5 & 1 Edw. 8. c. 50).

The Water Acts, 1945 and 1948 (8 & 9 Geo. 6. c. 42, 11 & 12 Geo. 6. c. 22).

The Rivers Pollution Prevention Acts, 1876 and 1893 (39 & 40 Vict. c. 75, 56 & 57 Vict. c. 31).
The Salmon and Freshwater Fisheries Act, 1923 (13 & 14 Geo. 5. c. 16).
The River Boards Act, 1948 (11 & 12 Geo. 6. c. 32).

The Public Health Acts, 1875 to 1932.
The Alkali, etc. Works Regulations Act, 1906 (6 Edw. 7. c. 14).
The Rag Flock Acts, 1911 and 1928 (1 & 2 Geo. 5. c. 52, 18 & 19 Geo. 5. c. 39).
The Rural Water Supplies Act, 1934 (24 & 25 Geo. 5. c. 7).
The Public Health (Drainage of Trade Premises) Act, 1937 (1 Edw. 8. & 1 Geo. 6. c. 40).
The Public Health (Coal Mine Refuse) Act, 1939 (2 & 3 Geo. 6. c. 58).
The Rural Water Supplies and Sewerage Act, 1944 (7 & 8 Geo. 6. c. 26).
The Building Restrictions (War-Time Contraventions) Act, 1946 (9 & 10 Geo. 6. c. 35).
Section nine of the New Towns Act, 1946 (9 & 10 Geo. 6. c. 68).

Housing:

The Housing Acts, 1936 to 1949.
The Housing (Temporary Accommodation) Act, 1945 (8 & 9 Geo. 6. c. 39).
The Building Materials and Housing Act, 1945 (9 & 10 Geo. 6. c. 20).
Section eight of the New Towns Act, 1946 (9 & 10 Geo. 6. c. 68).

The Housing (Rural Workers) Acts, 1926 to 1942.
The Housing (Rural Authorities) Act, 1931 (21 & 22 Geo. 5. c. 39).

The Small Dwellings Acquisition Acts, 1899 to 1923.

The Housing (Emergency Powers) Act, 1939 (2 & 3 Geo. 6. c. 73).
The Repair of War Damage Act, 1941 (4 & 5 Geo. 6. c. 34).

The Housing Act, 1914 (4 & 5 Geo. 5. c. 31).
The Housing (Town Planning &c.) Act, 1919 (9 & 10 Geo. 5. c. 35).
The Housing &c. Act, 1923 (13 & 14 Geo. 5. c. 24).
The Housing (Financial Provisions) Act, 1924 (14 & 15 Geo. 5. c. 35).
The Housing (Revision of Contributions) Act, 1929 (20 & 21 Geo. 5. c. 6).
The Housing Act, 1930 (20 & 21 Geo. 5. c. 39).
The Housing (Financial Provisions) Act, 1933 (23 & 24 Geo. 5. c. 15).

Rent control:

The Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1939.
The Furnished Houses (Rent Control) Act, 1946 (9 & 10 Geo. 6. c. 34).
The Landlord and Tenant (Rent Control) Act, 1949 (12, 13 & 14 Geo. 6. c. 40).

Burials:

The Burial Acts, 1852 to 1906.
The Local Government (Joint Committees) Act, 1897 (60 & 61 Vict. c. 40).

Coast protection:

The Coast Protection Act, 1949 (12, 13 & 14 Geo. 6. c. 74).

PART II

RETAINED HEALTH FUNCTIONS

The Local Government Act, 1933.	Sections one hundred and three, one hundred and six to one hundred and thirteen, and one hundred and fifteen to one hundred and seventeen (medical officers of health and sanitary inspectors). Sections two hundred and eighty-four (reports and returns) and two hundred and ninety (inquiries), so far as functions thereunder are exercisable as to Health matters.
The London Government Act, 1939.	Sections seventy-seven to eighty-four (medical officers of health and sanitary inspectors). Sections one hundred and seventy-four (reports and returns) and one hundred and eighty-nine (inquiries), so far as functions thereunder are exercisable as to Health matters.
The Local Government Act, 1929.	Part II (registration of births, deaths and marriages). Sections one hundred and twenty-nine (inquiries) and one hundred and thirty-one (orders, schemes and regulations), so far as functions thereunder are exercisable as to Health matters.
The Public Health Act, 1936.	Sections two to five (port health districts and authorities), and sections nine and ten so far as they relate to such districts or authorities.

The Public Health Act, 1936—*cont.*	Part V (prevention, notification and treatment of disease). Part VI (nursing homes, mortuaries, laboratories). Part VII (notification of births, maternity and child welfare). So far as functions thereunder are exercisable as to Health matters, sections two hundred and eighty-three (forms of notices), two hundred and ninety-one (recovery of expenses), three hundred and six (authorisation of compulsory purchase), three hundred and twelve (confirmation of byelaws), three hundred and thirteen (orders for amendment or adaptation of local Acts), three hundred and fourteen (power to apply provisions of Act to joint boards), three hundred and sixteen (adaptation of section two hundred and eighty-five of the Local Government Act, 1933), three hundred and eighteen (local inquiries), three hundred and twenty (relinquishment of functions by district councils), three hundred and twenty-one, three hundred and twenty-two, three hundred and twenty-four and three hundred and twenty-five (default powers), and three hundred and twenty-six and three hundred and twenty-seven (compensation of officers). The First Schedule (medical officers of health and sanitary inspectors of port health districts).
The Public Health (London) Act, 1936.	Sections five and six (port health authority). Part VIII (food). Part IX (prevention and treatment of disease). Part X (mortuaries). Part XI (nursing homes). Part XII (notification of births). Section two hundred and ninety-three (assignment to county council of functions of defaulting sanitary authority under epidemic regulations). Section two hundred and ninety-eight (publication of information as to health or disease). Section three hundred and five (additions to number of notifiable or dangerous infectious diseases). So far as functions thereunder are exercisable as to Health matters, sections two hundred and seventy-six (confirmation of byelaws), two hundred and seventy-eight (extent of byelaws), two hundred and eighty (restriction on proceedings against sanitary authority), two hundred and ninety (borrowing by sanitary authorities), two hundred and ninety-two and two hundred and ninety-five

The Public Health (London) Act, 1936—*cont.*	(default powers), two hundred and ninety-seven (inquiries), and three hundred and six (transfer to county council of functions of common council).
The Housing Act, 1936.	Section sixty-seven (duty of medical officers to furnish particulars of overcrowding).

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

This Order in Council is made under the Ministers of the Crown (Transfer of Functions) Act, 1946, and, after changing the title of the Minister of Town and Country Planning to the Minister of Local Government and Planning, transfers to him the functions of the Minister of Health under the enactments set out in Part I of the Schedule to the Order in Council, being functions relating to such matters as—

Local government and rating and valuation
Public health
Housing
Rent Control
Burials
Coast protection.

Part II of the Schedule sets out the functions under the enactments referred to in Part I which are excepted from the transfer and retained by the Minister of Health.

The Order in Council contains other provisions rendered necessary by the transfer of functions, including provisions enabling the charges in connection with the exercise of the transferred powers coming into payment between the date of the coming into operation of the Order in Council and the end of the current financial year to continue to be borne on the Ministry of Health Votes and accounted for accordingly.

The Housing Act, 1949 (Registration of Conditions) Rules, 1951

(SI 1951, No. 185)

Made - - - - *5th February*, 1951
Coming into Operation *15th February*, 1951

I, William Allen Viscount Jowitt, Lord High Chancellor of Great Britain, by virtue and in pursuance of subsection (5) of section 23 of the Housing Act, 1949, and section 15 of the Land Charges Act, 1925, do hereby make the following Rules:—

1.—(1) These Rules may be cited as the Housing Act, 1949 (Registration of Conditions) Rules, 1951, and shall come into operation on the fifteenth day of February, 1951.

(2) The Interpretation Act, 1889, applies to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

2. The Local Land Charges Rules, 1934, as amended, shall apply to entries required to be made on the register of local land charges pursuant to subsection (5) of section 23 of the Housing Act, 1949, in the same manner and to the same extent as they apply to local land charges registerable pursuant to section 15 of the Land Charges Act, 1925, and accordingly the Local Land Charges Rules, 1934, as amended, shall be further amended as follows:—

> In paragraph (*d*) of Rule 5 there shall be added the words " and to any conditions required to be registered by section 23 of the Housing Act, 1949."

EXPLANATORY NOTE

(This Note is not part of the Rules, but is intended to indicate their general purport.)

These Rules amend the Local Land Charges Rules, 1934, to provide for the registration in Part IV of the Local Land Charges Register of conditions required to be registered by section 23 of the Housing Act, 1949, with respect to dwellings in respect of the provision or improvements of which financial assistance has been given under s. 20 of that Act.

Parliamentary Intelligence

Replies to Questions in House of Commons

The following Government replies have been made to questions in the House of Commons.

December 15, 1950 (H. C. Debates, Vol. 482, col. *224*):

Form C. V. 121

In a written reply to Sir J. Mellor, the Chancellor of the Exchequer (Mr. Gaitskell) stated that the issue of form C.V. 121 is authorised by paras. (2), (3) and (4) of Regulation 12 of the Claims for Depreciation of Land Values Regulations, 1948 (SI 1948, No. 902). The text of the form was recently altered in order to make it clear that a claimant who objects to the Central Land Board's valuation may, if he chooses, supply the development value figure only, although the Board prefer that he should give all three figures named in Part II of the form.

January 30, 1951 (H. C. Debates, Vol. 483, cols. 709–710):

R. I. C. S. Memorandum

In reply to Mr. Black, the Minister of Local Government and Planning stated that he had already adopted some of the suggestions contained in the memorandum issued by the Royal Institution of Chartered Surveyors[1] and he was considering the other suggestions.

January 30, 1951 (H. C. Debates, Vol. 483, col. *89*):

Costs in Planning Appeals

In a written reply to Mr. Walker-Smith, the Minister said that costs are awarded to successful applicants in appeals under the Town and Country Planning Act, 1947, only in exceptional cases where it appears that the local planning authority have acted unreasonably.

New Towns—Populations—Church Sites

In a written reply to Mr. Black, the Minister gave the following figures for the proposed populations of New Towns: Stevenage, Harlow, and Hemel Hempstead, 60,000; Crawley and Basildon, 50,000; Corby, 40,000; Welwyn Garden City,

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[1] See [1950] 528, 619, 715.

36,500; Cwmbran, 35,000; Peterlee, 30,000; Hatfield and Bracknell, 25,000; Aycliffe, 10,000. Some of these figures may be increased.

In order to allocate sites amongst the various religious communities it was the practice of the development corporations to allocate sites for churches and church buildings after consultation with the local churches joint committees.

February 1, 1951 (H. C. Debates, Vol. 483, col. *146*):

Burden of Loans Charges for War-damaged Land

In a written reply to Mr. Awbery, who drew attention to the heavy burden of loan charges incurred by large cities which had suffered severe war damage and had borrowed money from the Treasury to purchase derelict land, the Minister of Local Government and Planning stated that in such circumstances the local authority may apply to the Public Works Loans Commissioners for authority to defer payment until re-development can take place. On re-development, substantial grants equal to 90 per cent. of loan charges during the early years, are payable to the authorities.

February 6, 1951 (H. C. Debates, Vol. 483, col. 1510):

Development Charges

In reply to Mr. Orr-Ewing, the Minister stated that he had no power to make regulations with retrospective effect authorising refund of development charge previously paid in respect of development which has now become exempt from charge under the revised regulations.

Debate on Town and Country Planning Bill

On January 23, 1951, a debate took place in the House of Commons on the second reading of the Town and Country Planning Bill (H. of C. Debates, Vol. 483, col. 43):—

Mr. Dalton, Minister of Local Government and Planning, said that the purpose of the Bill was to correct two drafting errors in the Act of 1947.

It had been supposed until recently that planning authorities would be able to intervene to prevent the restoration of war-damaged buildings in their exact former shape if such restoration would run counter to the authorities' redevelopment plans. The Government were now advised that as the 1947 Act stands, planning permission for the restoration of a war-damaged building to its previous condition is not required so long as any part of that building remains standing. Clause 1 was to prevent this.

The second matter was the period within which a planning authority could take action against unauthorised development or against breach of a condition imposed by the planning authority. There must be some period beyond which the law would not be involved against an unauthorised developer, but owing to an amendment of the 1947 Bill when in the House of Lords the four-year period in the 1947 Act dates from the date of permission being given and not from the date of the breach. A condition requiring discontinuance of a use after a period of years might be reasonable, but as the law now stands it would become unenforceable four years after the date of the planning permission.[1] Under clause 2 the period would run from the breach of the condition.

Mr. Assheton hoped that the recent administrative changes, whereby the Minister of Town and Country Planning acquired additional powers, would be satisfactory. The Act of 1947 had been the subject of much criticism, and he thought a much more serious amending Bill would soon be necessary.

Clause 1 as now drafted might perhaps be too wide, and it might be better to distinguish between major and minor works of war damage. The Opposition would not oppose the second reading of the Bill, but the Bill did not in any way meet their major criticisms of the 1947 Act.

Mr. Irvine said that the General Development Order grants permission for making good war-damaged property except in cases where the Minister has made a direction under that Order, and it is only where a direction is in force that clause 1 of the Bill has any relevance. The position where permission to repair war damage was refused and the property was then compulsorily acquired needed to be considered. If the war-damage payment was to be on a cost of works basis the compensation to the owner for the acquisition would be adjusted under s. 53 of the Act of 1947; but if a value payment was payable, there appeared to be no provision for adjustment.

Mr. Molson said that the development would now be brought under para. 1 of the Third Schedule to the Act of 1947, and if the owner required the local authority to acquire it after a refusal of planning permission, the compensation would take into account the refusal of permission.

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[1] This "hole in s. 23" was originally pointed out in this Journal in November, 1948, by Mr. Desmond Heap—see [1948] J. P. L. 536.

He also inquired whether the procedure of issuing directions was working satisfactorily.

Mr. Hale had hoped that the Minister would " lift for a moment or two, in the interests of clarity, that iron curtain which separates us from a full knowledge of the highly complicated workings " of the 1947 Act. He thought some further amendments might be desirable.

Mr. Hutchinson thought that there were many defects in the Act which might have been remedied by this Bill. One was the provision for excluding recent possession value from compensation for compulsory acquisition, which when applied to dwelling-houses occupied by their owners, produced an unjust result.

Mr. Hay wondered whether clause 1 was not too wide in that it would be necessary for planning permission to be obtained even by the owner of a partly damaged building, as in cases where only the roof and upper floor had been destroyed.

Mr. Watkinson had hoped the Bill would do something to assist an industrialist in moving or setting up a factory. The time which had to be spent in satisfying planning requirements and the amount of development charge to be paid were serious handicaps.

Mr. H. Strauss believed that the Government would be well advised to provide a right of appeal against the assessment of development charge.

Mr. Lindgren, Parliamentary Secretary to the Ministry of Local Government and Planning, said that the defect in s. 12 (2) (*a*)—that it allowed complete restoration of a building without planning permission, as " maintenance ", if some part of it were still standing—had not led to any serious cases in which redevelopment had been prevented. The general procedure had worked very well.

In reply to the suggestion that there should be a distinction between larger and lesser works of repair the need for clause 1 arose not only in areas where complete redevelopment was necessary because of blitz, but also on the fringes of such areas and in the case of relatively minor works within such areas. Most of the minor works had by now been carried out, and this was so also in cases such as where the top floor only of a building had been destroyed.

He could not undertake that amendments to the Act of 1947 other than those in the Bill would be considered in committee.

The Bill was read a second time and committed to a Committee of the whole House.

Development in Barsetshire

Development Charge in Theory and Practice

The following conversation may be assumed to have taken place when S., a surveyor, and D.V., the district valuer, chance to encounter one another in the smoking room of the Barchester County Club :—

S. Hallo, D.V. I haven't seen you lately, but I'm looking forward to our next meeting in your office to discuss development charge.

D.V. Why is that?

S. I went to hear a paper on the subject recently, and the speaker, referring to you, said " unfortunately the District Valuer has been made to seem to be a person of devilish ingenuity who is mainly concerned with the production of unusual processes of valuation to establish a development charge where morally and in common sense no one would assume one to be due ". In view of that don't you think you ought to reconsider some of our cases?

D.V. Perhaps in the early days I was a bit hard on you in one or two instances but on the whole I think our discussions have eventually resulted in a pretty fair assessment.

S. I venture to differ. In fact, had there been any right of appeal my clients in several instances would most certainly have exercised it.

D.V. Personally I would welcome a right of appeal, too, but hasn't one of your biggest grouses gone in view of the Chancellor of the Exchequer's announcement[1] regarding the relaxation of the special purchaser rule in connection with Part VI claims?

S. It certainly softens the blow to some extent—how much so we shall not know until the dividend is announced. It will not be much consolation to get 5s. in the £ on the claim against the global sum after having paid 20s. in the £ development charge.

D.V. Ah, well, there it is. Have a cigarette?

S. (*taking one*) Thanks. By the way, during a recent bout of 'flu I have been giving myself a refresher course in the theory of development charge and it seems to me that a practice has grown up of assessing development charge by short cut methods that are not strictly in accordance with those postulated in the Practice Notes.

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[1] [1951] J P. L. 98.

D.V. In what way?

S. Well, take the consent value for instance. Paragraph 57 of the Practice Notes defines this at some length, but begins simply enough—" the value of the land with the benefit of planning permission ". Now you and I, and many other surveyors often depart rather from this by arriving at a hybrid figure which is really " the value of the land with the benefit of planning permission *less* value of the tolerances ". Having done that we have to adjust the refusal value by neglecting the tolerances, whereas strictly the refusal value should be increased thereby. You will remember that was the way we did it last month ([1951] J. P. L. 100). In other words we deduct the tolerances from the consent value instead of adding them to the refusal value.

D.V. In most cases of extensions of mixed users it gives a simpler calculation : the result should be the same whichever way you do it.

S. Another point is that I have sometimes seen it stated that consent value cannot include value attributable to anything for which *further* planning permission is required, *e.g.*, the one-tenth extension allowed by the Third Schedule, and uses exempt by the Development Charge Exemptions Regulations. But the Practice Notes state (paragraph 50) that the Central Land Board consider it proper to assume that matters exempted by those regulations are permissible for the assessment of both consent and refusal values—provided, of course, they have a tangible value.

D.V. That is so, and as an illustration they mention advertisements. In no case, however, where a site has not already been used for the display of advertisements have you come along and claimed a substantial refusal value relying on the fact that there would be exemption from development charge for such a display, if permitted under town planning.

S. No, and I must say that on your part you have rarely tried to include in the consent value any element of value in respect of matters outside the planning permission in question but exempt under the regulations and, therefore, available according to paragraph 50.

D.V. I mostly find that I can say as a matter of practical valuation that there is no additional value for such purposes.

S. It seems, however, that the refusal value of a dwelling-house in existence on the appointed day can include, where appropriate, any or all of the following:—

(1) Conversion into two or more separate dwellings (Third Schedule).

(2) Use of part as a shop, not exceeding 200 sq. ft., if such use is combined with the residential use (this also applies to a house erected after the appointed day).

(3) Use as:—

Class XIII of the Use Classes Order—a building for public worship or religious instruction or for the social or recreational activities of the religious body using the building.

Class XIV—a home or institution providing for the boarding, care and maintenance of children, old people or persons under disability, a convalescent home, a nursing home, a sanatorium or a hospital (other than a hospital, home, hostel or institution included in Class XVI).

Class XV—(other than residentially) a health centre, a school treatment centre, a clinic, a creche, a day nursery or a dispensary, or use as a consulting room or surgery unattached to the residence of the consultant or practitioner.

Class XVI—a hospital, home or institution for persons of unsound mind, mental defectives, or epileptic persons, or a home, hostel or institution in which persons may be detained by order of a court or which is approved by one of His Majesty's Principal Secretaries of State for persons required to reside there as a condition of a probation or supervision order.

Class XVII—an art gallery (other than for business purposes), a museum, a public library or reading room, a public hall, a concert hall, an exhibition hall, a social centre, a community centre or a non-residential club.

D.V. The difference between the Use Classes for Third Schedule Purposes Order and the 1950 Order, coupled with the 1950 Exemptions Regulations produces some peculiar results. For instance, in the Third Schedule Order Class XIII groups homes, institutions providing for the care of children with boarding schools and residential colleges, whereas in the 1950 Use Classes Order children's homes are placed in a different Class XIV. Thus a children's home in existence on the appointed day is exempt from charge if turned into a boarding school because a change within the same Use Class is not in any case development. This does not seems to be the case where a dwelling-house has been changed into a children's home free (by virtue of the 1950 Exemptions Regulations) and it is now sought to make a further change to a boarding school, because that is excluded from the interchange between Classes XIV, XV, XVI, XVII provided in the 1950 Regulations.

S. It is difficult to appreciate that if you have two adjacent children's homes—one built before the appointed day and the other after—in the one case a change to a residential school would not be a material change of use and in the other it would.

D.V. I agree, and normally I would consider a " Nil " development charge appropriate in the second case.

Central Land Board Practice

Form C.V. 121

The Incorporated Society of Auctioneers and Landed Property Agents state (Incorporated Auctioneers Journal, February, 1951, p. 68) that the Society asked the Central Land Board whether the Board would make a contribution towards professional fees incurred by claimants under Part VI of the 1947 Act, if they successfully disputed a determination given on form C.V. 121. In reply, the Board, after referring to Mr. Lindgren's statement in the House of Commons on May 25, 1950, about Form L.39 ([1950] J. P. L. 524) made the following statement:—

> "The position is different where C.V. 121 is issued (unless, of course, the optional questions on form S.1 were answered and the other conditions set out in paragraph 16 of form S.1.A. complied with).
>
> We sent out form L.39 before we had ourselves issued our preliminary statement of value and with a view to supplying ourselves with material necessary for valuation. As regards qualifying for a contribution towards fees, L.39 cases, where figures had not been supplied at the outset, never came within the prescribed arrangements which are most carefully limited to cases where valuations were supplied with, or within three months of, the claim. As a special concession, however, which was prompted by the fact that claimants who had chosen not to submit estimates at the outset, were under the L.39 procedure being required to supply a valuation in order to keep their claim alive, it was agreed that, in the event of the claim being later substantiated (which we anticipate will be a rare event) a contribution should be given.
>
> The procedure under which we ask for a valuation on form C.V. 121 is quite different. The Board's request in these cases is made after they have made their own estimate of value, which they notify on form C.V. 121 itself. The request is in fact part of the regular drill (as laid down in Regulation 12 of the Claims Regulations, SI 1948, No. 902) for enabling a claimant who wishes to dispute the Board's valuation, to secure further consideration of his claim before a determination is issued. The

> claimant is called upon to furnish a valuation within a statutory period, and in this event the Board are required to consider the grounds of his objection before determining. No question arises of the disputing claimant having to comply with the request in order to keep his claim alive, for he may postpone giving notice of dispute until after the determination if he so wishes. In that event, however, he will have to pay a fee and will further have to supply a valuation of his claim. (I should mention here that we do not in fact require a claimant to supply in Part II of the form C.V. 121 any figure beyond the development value figure if for any reason he prefers to restrict his answer in this manner. We do not see much point in his so doing, however, since if his objections are to be considered, the more information that is given the better, from his point of view as well as ours.)
>
> I have gone into this matter at some length as I think it is important to establish that there is a fundamental difference between the two classes of case and that the limited concession that was made about fees in the L.39 case stands completely on its own."

Single House Plots

CLB/39, dated July 4, 1950

The Central Land Board have revised their leaflet House 2, which explains the conditions under which those who bought plots of land before July 1, 1948, to build houses for themselves, can have their development charge set-off against their claim on the £300m.

Copies of the revised leaflet, which cancels previous editions, are obtainable from the Board's offices.

The main alteration is that the Board will not, except in a few special cases, collect from single-plot owners any amount by which their development charge exceeds their claim because of a rise in market values.

Development Charge Valuations Agreed with the District Valuer *

(*Continued from* [1950] J. P. L. 362)

Locality of Property.	Type of Development.	Area of Land Involved.	D.C. Agreed.	Special Features.
Crayford, Kent.	8 three-bedroom houses, 4 two-bedroom houses, 4 one-bedroom houses, erected on existing frontage and in cul-de-sac constructed at rear.	1.85 acres.	£1,450.	Land acquired under compulsory purchase order. Compensation assessed in accordance with Part V of the Act of 1947 : £225.
Crayford, Kent.	16 two-bedroom type houses erected on existing frontage.	1.523 acres.	£1,200.	Ditto : £450.
Crayford, Kent.	4 three-bedroom type houses erected on existing frontage.	1,087 sq. yds.	£680.	Ditto : £10.
Ketton, Rutland.	Conversion of laundry to former R.C. Home for Women into two semi-detached bungalows.	8,218 ft. super.	£90.	Difficulty in arriving at basis for assessment. Agreed to take it as vacant building plot to assess D.C. in normal way and then discount for partial development as covered by existing buildings.
Eastbourne.	Conversion of stabling to bungalow.	.220 acre.	£200.	

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* Subscribers are invited to send to this Journal particulars of valuations for the purpose of assessment of development charge *which have been agreed with District Valuers.* The information supplied should be given under the headings as shown above.

Notes of Cases

Claim on the £300 million Fund—A Chose in Action, not Property held for the Purposes of a Transport Undertaking

Liss Transport, Ltd. v. Road Haulage Executive (No. 2),[1] Road Haulage Cases, No. 2 (E. & W.)/1950, p. 7 (July 17, 28, 1950). This was a decision by the Transport Arbitration Tribunal, constituted under the Transport Act, 1947, on an application for determination of compensation payable in respect of freehold property forming part of a road haulage undertaking, transferred under the Act to the British Transport Commission. Part of the property was undeveloped land, used as a kitchen garden but held by the transferor with a view to future extension of the premises and in respect of which a claim for loss of development value had been submitted under Part VI of the Town and Country Planning Act, 1947.

A small office building had been erected by the transferor in advance of the local authority's building line, the county council having consented to this on condition that it should be removed on request, without compensation, should the road on which the property abutted be widened.

THE TRIBUNAL (C. Montgomery White, Esq., K.C., W. H. Nevill, Esq., and W. H. Lawson, Esq.) held that although the undeveloped land had been held by the transferor company for the purposes of its undertaking within the meaning of s. 45 (1) of the Transport Act, 1947, the company's claim for loss of development value had not been property so held, but was a chose in action having a separate existence. The claim therefore did not vest in the British Transport Commission but remained vested in the transferor.

The tribunal also held that the potential liability of the transferor to have to remove the office building was a factor to be taken into account in assessing the value of the property.

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[1] A full report of this case will be published in *Planning and Compensation Reports.*

Lands Tribunal Decisions

Practice Note

The Lands Tribunal have issued the following Practice Note :—

A notice of appeal to the Lands Tribunal against the determination of the Central Land Board or against the decision of a local valuation Court must be in the name of and signed by the claimant, appellant or legal representative.

Where an agent or other representative is acting, a written authority signed by the claimant or appellant must accompany the notice of appeal.

Attention is directed to Rule 52 and the Third Schedule to the Lands Tribunal Rules, 1949, which prescribe the stamp fees payable on lodging documents.

Decision

Wroxall Estates, Ltd. v. Secretary of State for Air[1] (Reference No. 6127, November 29, 1950). This was a claim for compensation for 264.937 acres of land, being parts of two farms and some woodlands, together with certain easements of way and drainage, which had been requisitioned since April, 1940, for the construction of an aerodrome. Notice to treat was served on December 10, 1948. By s. 54 (1) of the Town and Country Planning Act, 1947, the compensation fell to be assessed as if the lands had not been requisitioned, and by s. 41 (1) of the Requisitioned Land and War Works Act, 1945, it was necessary to make any adjustment (so far as it depended on the value or changes in value of any land) necessary to offset any variation of the compensation attributable directly or indirectly either to damage to the land acquired or adjacent land during requisition in the war period, or to work done on such land during requisition—provided that in assessing compensation for injurious affection of the land retained, the state and circumstances of the land as at the date of notice to treat might be taken into account so far as they were expected to continue after the purchase.

The claimant submitted a valuation totalling £14,824, and the acquiring authority a valuation of £7,300, in each case based upon valuations of the parts of the farms acquired and the depreciation by reason of severance and injurious affection of the parts retained, calculated by deducting from the value of the farms in their former entirety on the assumption that the aerodrome had not been constructed, the value of the farms as remaining after the acquisitions and with the aerodrome existing on the lands taken. There were additional claims for woodlands and loss of sporting rights.

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[1] A full report of this case will be published in *Planning and Compensation Reports*.

The tribunal (J. L. MILNE, ESQ., F.R.I.C.S., F.A.I.) said that it was dangerous to over-simplify the mode of assessment and in building up an assessment of compensation in a disputed case the effect of any relevant statutable direction should be capable of being clearly seen, although it might be permissible to short-circuit a factor which falls to be eliminated by such a direction.

In valuing the two farms in their former entirety neither the claimant's method of taking a " modern " rent, deducting 20 per cent. for maintenance, and multiplying by twenty-eight years' purchase, nor the authority's method of taking the rents actually paid for the remaining parts of the farms, which had been fixed in September, 1947, afforded any real assistance in ascertaining the rental values of the farms in December, 1948, as if the lands now acquired had not been requisitioned. The conclusion the tribunal reached was that the saleable value of the two farms in their former entirety as at the date of notice to treat and assuming the aerodrome not to have been constructed would, apart from sporting rights, have been £16,000.

Having regard to the evidence submitted, and to the two valuations, the aggregate value of the two farms remaining after the acquisitions, subject to the easements being acquired, and with the aerodrome existing, was assessed, apart from sporting rights, at £6,900.

The claimant's figure of £490 (£10 per acre) for the area of felled woodland including the underwood, was accepted in preference to the authority's figure of £250. The claimant's figure of £2,000 for loss of value attributable to sporting rights was also accepted by the tribunal since a substantial loss of capital value to the sporting amenities of the estate must have resulted from the aerodrome and the taking of the lands acquired.

Accordingly, the compensation would be £16,000 less £6,900, plus £490 plus £2,000, *viz.*, £11,590.

*Notes of Planning Decisions**

Erection of Dwelling-house Near Main Road—Traffic Considerations

The following is an extract from a letter of the Minister of Town and Country Planning dismissing an appeal from the decision of the Isle of Wight County Council refusing permission for the erection of a dwelling-house by the side of a main road. The grounds for the Council's refusal of permission were the increase in danger and inconvenience to users of the road. The appellant claimed that he could obtain access to the road by agreement with an adjoining property owner so that no new access to the road was required.

" A. 3055 is one of the most important traffic routes on the island, carrying heavy holiday traffic, with many motor coaches during the summer months. At the point in question, the road is narrow and without footpaths. The Council are anxious to prevent further development, and the formation of new vehicular accesses on the land on the seaward side of the road. The Minister is satisfied that in the interests of road safety, and the free flow of traffic, the Council should be supported in their efforts to limit access on the south side. He notes that you have permission to share an existing access on your neighbour's land. A private arrangement of this kind, however, carries no permanent right, and if permission to build were given, and the private arrangement fell through, it would be virtually impossible to refuse permission for a second access. Apart from this, the arrangement would not remove the objection of more frequent entry and egress of vehicles, or of an increase in standing traffic (tradesmen's vehicles, etc.), on the Class 1 Road."

[By courtesy of the County Planning Officer, Isle of Wight County Council.]

Use of Dwelling-house for Boarding and Tuition of Deaf Children

The following is an extract from the letter of the Minister of Town and Country Planning, dated November 18, 1950, allowing an appeal against the refusal of the Watford Borough Council to consent to the use of No. 43 Park Road, Watford, for the boarding and tuition of deaf children.

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* The Managing Editor desires to express his thanks to those who have been kind enough to send to this Journal particulars of planning decisions, and hopes that he will continue to receive particulars of planning decisions which involve points of general interest.

"Your Council held that the area should be maintained as a high-class residential area, and be kept free from all non-residential users. They regarded the proposed development as a type of school, for which this semi-detached house on only a quarter of an acre was unsuitable.

The Minister has considered carefully all the facts before him and the representations of those concerned. He cannot accept the appellant's contention that her proposals do not represent a material change in the use of the property. He considers, however, that they are worthy of encouragement and he is of the opinion that they are quite innocuous and will in no way disturb the quietness of the neighbourhood.

He has accordingly decided to allow the appeal and grants permission for the proposed change of use subject to the condition that the establishment shall be limited to a maximum of nine pupils not more than five of whom shall be boarders."

[By courtesy of the County Planning Officer, Hertfordshire County Council.]

Use of Dwelling-house as Synagogue and for Religious Classes

The following is an extract from the letter of the Minister of Town and Country Planning, dated December 30, 1950, allowing an appeal against the refusal of the Hendon Borough Council to permit the continued use of premises at 89, Woodstock Road, N.W.11, as a synagogue and for religious classes for a period of five years.

"The Minister agrees with your Council that this semi-detached house is more suitable for residential purposes. On the other hand he notes that the appellants' use of the premises does not give rise to objectionable noise or disturbance, that not more than twenty to thirty people normally attend at any one time, always on foot as a principle of faith, and that the occupants of the adjoining houses have made no complaints. Moreover, the synagogue provides local families with an opportunity to worship in the manner they desire. In these circumstances the Minister does not consider that he would be justified in opposing the continued use of the premises for the limited period desired. He wishes to stress however, that, in his opinion, the Federation should do everything in their power to obtain alternative accommodation as soon as possible."

[By courtesy of the Town Clerk, Hendon Borough Council.]

Use of Additional Room in Dwelling-house for Purposes of a Bank

The following is an extract from a letter of the Minister of Town and Country Planning, dated September 30, 1950, dismissing an appeal by Lloyds Bank, Ltd., against a determination by Bournemouth County Borough Council that the use of a room at 462, Holdenhurst Road, Bournemouth, for the purposes of a bank would constitute development within the meaning of the Act, for which planning permission was required.

" No. 462 Holdenhurst Road is an eight-roomed dwelling-house, one room of which has been used as a banking office since 1927. The proposal under appeal is to use, in addition, one other room for bank purposes in order to provide an interview room.

No. 462 is separately occupied for two substantially different uses and the Minister is satisfied that the use for bank purposes, of a room which at present forms part of the dwelling accommodation, constitutes a material change in the use of that part of the house which is now in use for residential purposes."

[By courtesy of the Town Clerk, Bournemouth County Borough Council.]

Converted Railway Coach as Living Accommodation in Rural Zone—Hardship to Appellant

The following is an extract from the letter of the Minister of Town and Country Planning, dated November 17, 1950, giving his decision on an appeal against the refusal of the Guildford Rural District Council to permit the retention and continued use of a converted railway coach as dwelling accommodation on land at Ponds Lane, Shere.

" The Minister is fully in agreement with your Council that the siting of a railway coach in this lovely stretch of woodland and attractive countryside, which your Council propose to include in the development plan as a landscape zone, is quite wrong. He is in no doubt that the permanent retention of this sub-standard dwelling, without essential services other than piped water supply, is objectionable from every point of view, and on this land would affect adversely the amenities of the area.

The Minister is, however, greatly concerned at the hardship that would be caused to the present tenant, whose health, he understands, is far from good, if this appeal were dismissed.

The Minister has therefore decided, solely on compassionate grounds, to allow the appeal to the extent that he permits the retention on the land and the continued use of the railway coach as dwelling accommodation for a period of two years from the date of this letter, subject to the condition that no further buildings shall be erected on the site."

[By courtesy of the County Planning Officer, Surrey County Council.]

Two-year Permission for Chalet and Caravan Development, Pending Development Plan

The Minister of Town and Country Planning has allowed an appeal against the refusal of the Whitstable Urban District Council to permit a chalet and another hut to be built on land at Kimberley Grove, Seasalter, and a caravan also to be sited on the land.

The Council considered that as there were already thirteen approved camps in the district permission should be refused and infiltration of camping into the residential areas of Seasalter should be prevented.

The Minister considers there is a need for individual camping sites in the neighbourhood, and in this particular case feels the use might be permitted for a short time until the provisions of the development plan emerge. He therefore allows the appeal for two years on the condition that the buildings shall be removed and the land reinstated at the end of that period.

[By courtesy of the Public Relations Officer, Kent County Council.]

Conversion of Dwelling-houses to Shops and Flats—Planning Permission Under Previous Law

The following is an extract from the letter of the Minister of Town and Country Planning, dated January 19, 1951, dismissing an appeal against the refusal of the Watford Borough Council to permit the conversion of eleven dwelling-houses situate at St. Albans Road, Watford, into shops and flats.

" The Minister notes that you obtained planning permission in 1938 to convert fourteen dwelling-houses into shops and flats and had converted three before the outbreak of war prevented the completion of this scheme. In 1940 you entered into an agreement with the Council under which you agreed to surrender free of cost the forecourts of the premises which were to be paved by the Council as and when conversion took place. The Minister recognises that refusal of permission is likely to cause hardship to yourselves, but he must, however, have regard to the more recent planning proposals which confine the shopping areas in the St. Albans Road more strictly and with advantage to the proper planning of the district. He is of the opinion that the Council's proposals will ensure a more even distribution of compact shopping centres throughout the area."

[By courtesy of the County Planning Officer, Hertfordshire County Council.]

Commercial Advertising Sign

The following is an extract from the letter, dated November 16, 1950, of the Minister of Town and Country Planning, dismissing an appeal for planning permission for the intermittent display, on ground supports, of a business sign relating to the sale of used cars on a vacant site adjoining a garage, in a locality which is mainly commercial in character.

" The locality is of a pleasant appearance, and includes some buildings of architectural interest in the vicinity of the site. The Minister is of the opinion that notwithstanding the predominantly commercial character of the locality, the display of the sign in this position is prejudicial to amenity."

[By courtesy of the County Planning Officer, West Sussex County Council.]

Commercial Advertising Sign

The following is an extract from the letter of the Minister of Town and Country Planning, dated December 15, 1950, dismissing an appeal for planning permission for the display of an illuminated sign on a post at the edge of the wide forecourt of a shop fronting on to a trunk road.

" The Minister observes that the locality forms a small commercial centre in a wider residential and rural area. He is of the opinion that notwithstanding the commercial character of the locality the display of this sign is prejudicial to amenity."

[By courtesy of the County Planning Officer, Surrey County Council.]

Motor Repair Business in Residential Area

The following is an extract from the letter of the Minister of Town and Country Planning, dated October 5, 1950, conditionally allowing an appeal against the refusal of the Walton and Weybridge Urban District Council to permit the use of a workshop and store at the rear of 90 Oatlands Drive, Weybridge, for the repair of motor cars and a private car hire business.

" The Minister notes that your Council approved a scheme on July 29, 1947, for the development of a portion of Oatlands Mere Estate, including No. 90 Oatlands Drive, for residential purposes. He is in agreement with your Council that the establishment of a motor repair business with access onto Oatlands Drive, a classified road, A. 3050, is out of place in this residential area. He appreciates that in its present limited form and at the present time the business is causing little harm, but he is satisfied that the permanent establishment of such an industry on this site, and the possibility of its expansion, would injure the amenities of this attractive residential neighbourhood. While he considers that an unlimited permission would be clearly wrong, he has come to the conclusion, in order to allow the appellant time to find a more suitable site, that a temporary consent would be appropriate.

The Minister has accordingly decided to allow the appeal to the extent that he permits the continued use of the existing workshop and store for the repair of motor cars and a private hire business for a period of one year from the date of this letter."

[By courtesy of the County Planning Officer, Surrey County Council.]

Industrial Use in London Suburb—Temporary Permission Pending Reconstruction Scheme

The following is an extract from a letter of the Minister of Town and Country Planning, conditionally allowing appeals against (a) the refusal of the Hendon Borough Council to permit the use of land at Edgware Road, N.W.4, for the storage of timber, and (b) the failure of the Council to issue a decision, within the statutory period, on an application to permit the continued use of buildings at the same premises for the storage of timber, the manufacture of packing cases and as part of offices and lavatory block.

" At the Inquiry your Council said that, in their view, it was difficult to reconcile the use of the land in question for industrial purposes, and the consequent addition to the industrial capacity of the Borough, with their general planning policy which was aimed at bringing about a reduction of industry wherever possible. The Minister wishes to assure the Council that he is entirely in sympathy with this policy, and that he agrees the aim must be to decentralise both population and industry from Hendon. He thinks, however, after carefully considering the circumstances of the present case, that, as the site consists of a narrow tongue of land lying between the main Edgware Road and extensive railway sidings, and as it is surrounded by other industrial undertakings, the use of the land for industry must be accepted.

At the same time the Minister is in no doubt that the unsightly temporary structures which are at present on the site must be removed at the earliest possible date, and he has come to the conclusion that permission should be granted for a limited period in order that the appellants might have a reasonable time in which to prepare and put into effect a reconstruction scheme.

He therefore allows the appeals, to the extent that he grants permission for the use of the land and buildings under appeal for the storage of timber, the manufacture of packing cases, and as part offices and lavatory block, for a period of three years."

[By courtesy of the Town Clerk, Hendon Borough Council.]

Correspondence

To the Managing Editor,
Journal of Planning Law.

Sir,

Bulletin of Selected Appeal Decisions

Your article at [1951] J. P. L. 80, refers to a number of decisions of the Minister of Town and Country Planning published in the *Bulletins of Selected Appeal Decisions,* citing them merely by their numbers, *e.g.,* "VII/13". This, however, seems a somewhat naked and uninformative type of reference, and the roman numerals may well become tiresome in a few years time, so that a revised version seems desirable. One's first impulse is to take the initial letters of "Selected Appeal Decisions", thus, "S. A. D. 7 (13)". However, the initials form a word which is too often true but tactless to the rejected appellant. The next suggestion, "B. A. D." ("Bulletin of Appeal Decisions") is no better, and "M. A. D." ("Minister's Appeal Decisions") is worse. Even the title in full produces "B. S. A. D.", and this depends too much on the weight to be given to the first full stop.

It is a wise father who knows how to christen his child with names which are not only suitable but avoid producing initials such as the Charles Arthur Davidsons and the Henry Owen Greens of this life have to bear manfully through school. The Ministry of Town and Country Planning seems to have achieved no greater success than did the old "Office of the Masters in Lunacy", which, seeking to escape any connotation of insanity, was nevertheless in 1930 for seventeen years transmuted into the "Management and Administration Department", a title which in full was cryptic and in brief restored that which it sought to expel. Could not the Ministry, having itself changed its name, take a lesson from the Car Licensing Authorities who, with a pithy range of three letter words at their disposal for use on number-plates, nevertheless spare us the more direct thrusts?

I am, Sir,
Your obedient servant,
R. E. Megarry.

Lincoln's Inn.

To The Managing Editor,
Journal of Planning Law.

Sir,

Development Charge Exemptions Regulations, 1950

Your learned contributor, Mr. Greenwood, in his article in the February issue of the Journal of Planning Law, "Planning and the Solicitor, III", was possibly affected a little by the holiday spirit of the occasion when he apparently wrote his article—New Year's Eve. In the last paragraph of p. 78, there is a reference to the Exemptions Regulations, 1950, which may be slightly misleading. Under the Regulations, exemption from development charge is extended to certain cases, including (*inter alia*) conversion of houses into separate dwelling-houses. Your learned contributor says in the paragraph referred to ". . . the Exemptions Regulations to which we have just referred, extend to the conversion into any number of separate dwelling-houses of not more than three adjacent buildings, each of which was in use as a dwelling-house on the appointed day, or if then under requisition, was in use for residential purposes . . .".

The exact words used in the Regulation refer to three cases, two of which are now relevant. "The use as any number of separate dwelling-houses of not more than three adjacent buildings, each of which was originally erected as a single dwelling-house and either (*a*) was used for residential purposes on the appointed day, or (*b*) in the case of a building which was requisitioned land on the appointed day, was so used at the beginning of the period of requisition or . . .". The point is that clause (*a*) refers to the case of a house originally erected as a single dwelling-house and used for *residential purposes* on the appointed day. We have a case in the office where the words "residential purposes" are of great importance. A client has just bought a house which was a single dwelling-house when erected (say 50 years ago) and on the appointed day was used as a small boarding-house, and was sold recently as such, though no guests normally reside there during the off-season. Our client wishes to turn it into two flats and to stop using it as a guest house. Is development charge payable? No—because (1) it is submitted that he comes within the 1950 Regulations because the house was erected as a single dwelling-house *and* on July 1, 1948, was used as a boarding-house—*i.e.,* precisely and exactly for "residential" purposes. (*Aliter, e.g.,* in the case of an inn, used by travellers in transit and not to reside for some time.) (2) If the Regulation does not apply, in fact no development charge should be payable because the value of the property will not have been increased by the change of user. Do you agree, please?

Planning permission for a material change of use will of course have to be obtained.

Yours faithfully,

Bryant & Griffith,
Solicitors.

Minehead.

Practical Points

All questions for consideration should be addressed to "The Managing Editor, The Journal of Planning Law, 3 Chancery Lane, London, W.C.2." The questions of subscribers only are answerable in the Journal. All questions should be submitted in duplicate. The Publishers cannot accept any responsibility for the correctness of replies.

286. *Advertisements—danger sign.*

Our client is the owner of a farm with a main entrance leading into a trunk road on a dangerous corner. He wishes to erect and maintain a warning sign to warn traffic approaching the corner of the farm entrance. In the district there are so many ordinary signs stating "Farm entrance" that they tend to become disregarded. Our client, therefore, wishes to use some means out of the ordinary.

We are wondering whether under the provisions of the Town and Country Planning (Control of Advertisements) Regulations, 1948, as amended, he could without obtaining the consent of the planning authority legitimately erect six separate signs, each not exceeding 2 sq. ft., and containing respectively the letters "D" "A" "N" "G" "E" "R" so that if they were spaced apart at a reasonable distance they would spell "DANGER".

Reg. 12 (1), Class II (*a*) of the Town and Country Planning (Control of Advertisements) Regulations, 1948, includes advertisements not exceeding 2 sq. ft. in area, and makes no reference to the number of advertisements that may be erected. Ministry Circular No. 56, para. 9, comments on the regulation, and adds "unlimited in number".

If you feel able to advise us that our client can legitimately carry out the suggestion which we have made, will you please let us know in what circumstances the local planning authority can prevent the signs being maintained if they can do so at all? [C. V. & H.]

ANSWER

I agree that these notices, limited in size as mentioned, would appear to fall within reg. 12 (1), Class II (*a*), presuming that the notices will not offend against Standard Condition

No. 4 (see First Schedule, Part II, to the Control of Advertisements Regulations, 1948).

The local planning authority could at any time, by notice served under reg. 8, require the farmer to make application for express consent for the continued display of the notices.

The signs would, however, seem to offend against the Road Traffic Act, 1930, s. 48 (as amended by the Road Traffic Act, 1934) and are liable to be removed by the highway authority. [J. F. G.]

287. *Builder's near-ripe land—position of owner on compulsory acquisition.*

A local authority have served a notice to treat in respect of certain plots of land belonging to our client, a builder, which are required by the authority for the erection of houses for the police force. The plots form part of what prior to 1939 was a building estate which was being developed by our client, and streets and sewers have been laid but have not yet been taken over by the local authority. The land qualifies for " near ripe " treatment only, and the builder does not propose to continue with the development of the estate.

The compensation offered by the local authority is " existing use " value, and your opinion on the following points would be appreciated :—

(a) Should the compensation include the value of roads and sewers?

(b) Will the " near ripe " treatment be of any value to the builder, bearing in mind that he will not continue to build on the estate? [J. C. H. B. & S.]

ANSWER

The land will be sold to the local authority at existing use value irrespective of the cost of roads and sewers, but including their value so far as they affect, and their value is included in, the existing use value.

Assuming that the builder has a " ration " all he has to do is to wait until claims under s. 58 are paid out when he will receive the full development value (for Part VI purposes) of his ration less any charges " logged up " against the claim. See S.IA/NR (Revised). [W. A. L.]

288. *Claim for loss of development value—costs of erection.*

Clients of ours are now being served by their District Valuers with forms C.V.121 in respect of properties demolished by enemy action during the war, and rebuilt by the owners, who only received value payments from the War Damage Commission, and they are asked to agree that there is no development value.

In one case four houses which cost not more than £400 each to erect about forty years ago have cost £5,500 to re-erect, that is £1,375 each.

Can you say whether the District Valuer is right in suggesting that there is no development value in a case of this kind? [M. & M.]

ANSWER

The question is not the cost of building, but was the value of the land greater as unrestricted than as restricted. As it has apparently been redeveloped in much the same way, *prima facie* that is the most appropriate development, in which case there has been no loss of development value. [W. A. L.]

289. *Claim for loss of development value—effect of Rent Acts and Reg.* 68CA.

We are negotiating with the District Valuer regarding the unrestricted value of a property with reference to a claim under Part VI of the 1947 Act. We are suggesting that the property, a dwelling-house, in a subsidiary shopping centre, could be converted to shop and house, and have suggested a figure as unrestricted value.

The District Valuer raises the point that the Rent Restriction Acts apply to the building, and our value can never be realised. He also suggests that reg. 68CA serves to sterilise such development.

We consider that, as unrestricted value is calculated upon the assumption that planning permission would be granted, it must be deemed that sufficient vacant possession for the necessary works must have been gained, and that the local authority has waived any restrictions under the regulation. [H. & C.]

ANSWER

The District Valuer is correct. The question is whether a purchaser would have given more for the property on July 1, 1948, because of the potentiality for future shopping use. If he would have done, what was that additional value in terms of prices on January 7, 1947?

S. 52 assumes that scarcity values will be over by January 1, 1954, and it is possible that in 1948 a purchaser would have anticipated early freedom from the Rent Acts and Defence Reg. 68CA. January 1, 1954, was the Government's own date fixed in mid-1947, and I cannot see why they should repudiate it as a suitable date a bare year later, even although it may seem *now* they were years out. [W. A. L.]

290. *Development charge—existing contravening development.*

Clients of ours own a property which was used for a hostel. It has been so used since 1946, but we have reason to believe that this user was, in fact, a contravention. No action has been taken by the planning authority to enforce discontinuance of the use. Our clients now wish to sell the property and a prospective purchaser has been found who wishes to continue the same user. He has decided to apply for planning permission in order to regularise the matter.

Would you kindly let us know whether in your opinion should planning permission be granted the purchaser would be liable for development charge, or are we right in assuming that because this is a continuance of an existing user as at July 1, 1948, no development charge is payable despite the fact that the user at the material date was in contravention of previous planning control? [F. L. & C.]

ANSWER

It is reasonably clear that development charge will *not* be payable in such circumstances; see [1949] J. P. L. 454 and 637. [J. F. G.]

291. *Development charge—ten per cent. tolerance.*

The owners of a wire manufacturing mill are making a small extension to their works which comes well within the 10 per cent. tolerance permitted, but in addition they are, over a considerable area, taking off the old nearly flat roof and replacing this with a new roof of higher pitch.

The higher roof which is to take the place of the existing low roof increases the cubic content of the existing buildings substantially, but the working area of the floor space of the works, of course, remains the same.

We shall be glad to have an opinion as to whether the additional cubic content which will be added to the existing building when this new roof is put on, which will bring the total increased cube well over the ten per cent. tolerance permitted, is an increase for which the Central Land Board may legitimately claim that a development charge will have to be paid. [H. B. S. G.]

ANSWER

If the increase in cube exceeds ten per cent., a development charge has to be *determined*, but not necessarily paid, for it may be nil. The answer would seem to be: erect the extension first under the tolerance and then alter the roof.

It may be that an owner can elect whether works will be under the tolerance or otherwise. If so, the sequence would not matter, but if the Board said of any work that it would attract a charge subject to the tolerance, I do not see that the owner has any power to object. Therefore, if the roof were altered first, the extension might attract charge.

Possibly the work to the roof will be costly without adding to the value of the property, and it might be possible to combine this with an enlargement to the working space far beyond the 10 per cent. and to escape charge on the whole having regard to the amount arrived at after deducting the total cost of the work from the total improvement in value which results from it.

It is assumed that the alterations to the roof are such as would constitute a material alteration to the external appearance of the building, a question which can be tested by asking the planning authority under s. 17 whether it is development. [W. A. L.]

292. *Enforcement notice—criminal proceedings under* s. 24 (3) *following non-observance.*

At the end of the judgment in *Stamp* v. *Bognor Regis U. D. C.*, 1 P. & C. R., at p. 223, the Chairman of Quarter Sessions said that "maybe there are other remedies open to a person served with a (enforcement) notice that the planning authority had no power to give at the time", and a footnote in *Planning and Compensation Reports* indicates that this may refer to the question of defending any criminal proceedings which may subsequently be brought by the planning authority under s. 24 (3) of the 1947 Act.

As you are aware, when an enforcement notice is served under s. 23 the person upon whom it is served has alternative rights of either making application for planning permission with a subsequent appeal to the Minister against a refusal, the Minister's decision being final, or of appealing to a court of summary jurisdiction with a further right of appeal to

Quarter Sessions or by way of case stated on a point of law to the High Court.

In the event of his failing on either of these alternatives the enforcement notice then becomes of full force and effect, and if not complied with, s. 24 (3) states that if the land is continued to be used in contravention of the notice " then he shall be guilty of an offence ".

I am wondering, therefore, what defence you had in mind in view of the wording of the sub-section which I have quoted, assuming that the correct procedure has been followed in the service of the summons, etc. [A. B.]

ANSWER

There is in fact no provision in the 1947 Act making an enforcement notice, against which no appeal has been brought under either s. 23 (3) or s. 23 (4), " final and conclusive " (cf. the words used in s. 15 (5) of the Housing Act, 1936, dealing with a somewhat similar matter, where the position is, it is submitted, different). All that s. 23 (3) says, is that an enforcement notice " shall take effect ", at the end of the relevant period. This expression is surely not strong enough to cure a notice which is bad *in limine*, by reason (*e.g.*) of its having been served out of time. As *Stamp* v. *Bognor Regis U. D. C.* showed, oddly enough, petty sessions on an appeal under s. 23 (4) cannot quash the notice by reason of its invalidity in point of form or time; but there seems to be no reason why such an argument should not be raised in proceedings brought under s. 24 (3). Thus, if *Higham* v. *Havant & Waterloo U. D. C.* (1950), 1 P. & C. R. 281, had been decided the other way, and the Bognor Regis U. D. C. had attempted to prosecute Stamp under s. 24 (3) for non-compliance with their enforcement notice, they could have been met with the argument that the enforcement notice was bad, having been served out of time, *although* this same argument had failed in the previous proceedings under s. 23 (4). [J. F. G.]

293. *Material change of use—use of dwelling-house to accommodate hotel staff.*

A hotel company has purchased a private dwelling-house which is near to but not adjoining the main hotel premises. A portion of this dwelling-house has been let furnished and three of the remaining rooms will be occupied as sleeping accommodation for the receptionists at the hotel.

The local planning authority has determined that the proposal to use part of the premises for sleeping accommodation for hotel staff would be a material change of use for which planning permission is required.

Your opinion on this point would be appreciated. [E. T. B. S.]

ANSWER

My view is that in this case there is a material change of use, there being a distinct change from family to communal residence. In so far as it is necessary for hotel servants to be housed near at hand to secure the proper working of the hotel, the use of the house for sleeping purposes by hotel employees might be considered as an extension of the hotel as a hotel. I think there is a clear distinction between a house where lodgers are taken in which still remains a family house and a house or part of a house that is occupied as a hostel. [R. P. C.]

294. *Use classes—motor car repairs to light industrial use.*

Clients of ours have premises which for some time past have been let to tenants who have carried on the business of motor car and motor vehicle repairs. This tenancy has recently expired, and after some slight alterations and improvements have been made to the building, it is shortly to be let to a firm of light engineers.

We should be much obliged if you would let us have any authorities showing whether or not this is a case in which there is a change of user. [B. & M.]

ANSWER

The existing use is either class III or class IV of the Use Classes Order, 1950 (SI No. 1131). If it is class III, change to another light industrial use is not development. If it is class IV, a class III use is permitted by the General Development Order, 1950 (SI No. 728) class III, without charge by the Development Charge Exemptions Regulations, 1950 (SI No. 1233), exemption 3 (4). [W. A. L.]

THE JOURNAL of PLANNING LAW

Published by
SWEET & MAXWELL, LIMITED
2 & 3 CHANCERY LANE, W.C.2

On the First of Every Month
Subscription: £1 10s. 0d.

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"Planning Law" Notes

The Town and Country Planning Bill became the Town and Country Planning (Amendment) Bill during its passage through Parliament and has now received the Royal Assent.

Bulletin of Selected Appeals Decisions No. 9, containing the usual interesting selection of reports of planning appeals, has been issued by the Ministry and is summarised in this issue (*post*, p. 230). This Bulletin is dated prior to the letter from Mr. Megarry published in our last issue (*ante*, p. 180), and we must await the next Bulletin to see whether the Ministry are prepared to offer any lead as to an appropriate short citation of these reports.

In this issue " Practical Points " reach their third century—" not out ", and judging by our postbag, not likely to be so for a very long time yet.

Those who have derived benefit from this feature of the Journal (and one subscriber recently confided that he thought it was our most useful contribution to those concerned with planning), will welcome the wide selection of questions with answers which have recently been published in the form of a book " Practical Points on Planning Law ", edited by the Assistant Editor of this Journal (Sweet and Maxwell, 16s., post free). The great majority of these have not previously been published, and only points which are relevant to the present position have been included. All have been brought into conformity with recent changes in the law, and suitably grouped and indexed for easy reference.

A critical leading article in *The Economist* of March, 3, 1951, entitled " The Town Planners' Dream " alleges that the Act of 1947 " has turned out to be one of the worst legislative blunders of the century ", and comments on the change which has occurred in public opinion in relation to town planning during the past five years. People are becoming disillusioned with planning, it is suggested, by a plenitude of plans, a multiplication of controls, and a hierarchy of officials which have not resulted in much improvement in social conditions.

The main reason for this is said to be economic stringency —improvements have to be paid for in advance and grandiose schemes become " modified " almost out of existence. But also, whereas a tight control has been instituted over even small matters of private development there is no proper control over the major projects of development, for which government departments and public corporations are responsible. Moreover the financial provisions concerning development charge and compensation are unpopular and would become a serious deterrent to private enterprise.

Two lessons are suggested. First, in deciding the best use of land, a freer play should be given to the economic factor. Secondly, planners must count the cost of their proposals in terms of resources likely to be available. Town planners, the article concludes, must rediscover their social function of securing better and healthier living conditions, and unless the government and the nation accept the need for still more sacrifices in return for greater social benefits later, the town planning machinery will lose its *raison d'être*.

The " Progress of Development Plans ", *post*, p. 229, is, so far, not very rapid progress to report this month. All local planning authorities are under a statutory duty to submit plans to the Minister before July 1 next—now only two months ahead—and with only four full and two part area plans so far submitted, considerable activity in this matter in the very near future may be anticipated. The Minister may extend the period for submission of a plan in any particular case, but there is no provision in the Act for a general extension of the period.

An enforcement notice ordering the closure of Bekonscot Model Village at Beaconsfield, on the grounds that it was detrimental to the local residential amenities and in contravention of planning control, was quashed by the Beaconsfield magistrates on March 9, 1951.

Costs of thirty-five guineas were awarded against the Bucks County Council.

The Shoreham and Lancing Beaches Development Plan, which was the first plan under the Act of 1947 to be submitted to the Minister and to be approved by him, has now been published. Copies may be obtained from the Clerk of the West Sussex County Council, Chichester, price £2 2s. 0d. each.

The demands of the service departments for land in rural areas for training purposes have on several occasions led to a conflict of views. In the case of land on and near Cannock Chase, Staffordshire, where the original proposals raised strong objections, the Ministry now report that substantial modifications have been made and the revised proposals have been agreed by all the interests concerned.

This result has been achieved by the War Department and Ministry of Supply waiving their claim to some 820 acres of land, and agreeing to take certain alternative areas instead. This co-operative attitude of the military authorities will no doubt be very welcome to everybody, and the rural preservation societies have cause to be well satisfied with the results of the protracted negotiations in which they gave considerable assistance.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Journal. They should be sent to the Managing Editor, *Journal of Planning Law*, 3 Chancery Lane, London, W.C.2. *Every attempt will be made to return drafts or unsuitable copy but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

Party Walls

By J. R. McLey Smith

The legal position of party walls is a complex one, and many problems in relation to them must have arisen since the war, particularly where part of a party wall has been destroyed by enemy action.

Fry, J., in *Watson* v. *Gray* (1880), 14 Ch. D. 192, stated that there were four different senses in which the term "party wall" was used:—

(a) a wall which is vested in the owners of adjoining lands in equal moieties as tenants in common;

(b) a wall divided into longitudinal halves, one half belonging to each of two adjoining owners;

(c) a wall which belongs entirely to one of two owners of adjoining lands but which is subject to an easement of user belonging to the other owner;

(d) a wall longitudinally divided, each moiety being subject to an easement of user by the owner of the other moiety.

In an earlier case, *Wiltshire* v. *Sidford* (1827), 8 B. & C. 259 n., it had been said that where the builder of two houses separated by a wall conveyed one of them, an undivided moiety of such wall was transferred so that the owners of the houses became tenants in common thereof.

Since 1925 a legal estate in land cannot now be held by persons as tenants in common and conception (a) above was dealt with by s. 39 (5) and the First Schedule, Part V of the Law of Property Act, 1925, as follows:—"The ownership thereof shall be deemed to be severed vertically as between the respective owners and the owner of such part shall have such rights to support and of user over the rest of the structure as may be requisite for conferring rights corresponding to those subsisting [before 1926]". These rights are the rights of one legal tenant in common against the other, and are therefore rights of user and support over the whole of the structure. It is interesting to note that there is no natural right of support of a building by a building (*Southwark and Vauxhall Water Co.* v. *Wandsworth Board of Works*, [1898] 2 Ch. 603), but the right may be granted by implication as when an owner of two houses transfers one to another owner, on the principle expressed in *Wheeldon* v. *Burrows* (1879), 12 Ch. D. 31, that a vendor cannot derogate from his grant. (Party walls created since 1925 are governed by s. 38 (1) of the Law of Property Act, 1925.)

Since 1925, if the two halves of the wall have been in separate ownership, it appears that easements by prescription have been possible although this was not possible before 1926 if the adjoining owners were tenants in common of the whole wall. But is the easement of support merely over the party structure or over the whole of the adjoining house? This is difficult to say with accuracy, but it is certain that the demolition of the adjoining house must not be proceeded with without providing adequate alternative support, although no right of action accrues until actual damage results (*Bond* v. *Nottingham Corporation*, [1940] Ch. 429; *Backhouse* v. *Bonomi* (1861), H. L. C. 503).

Even if there are cross easements of support and user there is no obligation on any one to repair (*Jones* v. *Pritchard*, [1908] 1 Ch. 630), but either owner is entitled to repair the half of the other to enable him to enjoy his rights and *a fortiori*, neither owner is entitled to do any positive act which would result in damage to the party wall.

The real trouble today arises from war damage. If a party wall is left standing with the rest of one of the adjoining buildings demolished, and the party wall is only of flimsy material and not weatherproof, what is the liability of the owner of the demolished house to make his part of the party wall weatherproof, or if he rebuilds to build right up against it? It is submitted that there is no liability on him at all (but access should be given to the adjoining owner to do such work as he desires), because there does not appear to be a class of easements to cover protection against wind and weather, although the learned Editors of *The Justice of the Peace* have suggested that there might, in a particular case, be an implied right. If there has also been some loss of support through such war damage it has also been said (by a learned counsel to the Association of Municipal Corporations) that the owner of the standing house has a claim against the War Damage Commission for this loss of support. *A fortiori* therefore, the owner of the standing house would appear to have a claim against the War Damage Commission, if only his half of the party wall was left standing, for loss of support, and possibly would have a claim for rendering the party wall weatherproof.

In the case of demolition of some of a block of terraced houses by an owner under the provisions of the Housing Act, 1936, or by the local authority in default, *Bond* v. *Nottingham Corporation*, *supra*, is authority for stating that such demolition, which involves the withdrawal of support, cannot be done without providing alternative support for the adjoining house, and, even if only on public health grounds, if the work is done by the local authority, they should render the party wall weatherproof. It is doubtful, however, whether they could recover the expenses of doing the latter under s. 13 of the Housing Act, 1936, since, if there is no easement for protection against the weather, there would be no legal liability on the council to do the weatherproofing. The cost of providing equivalent support will be recoverable by the council under s. 13 from the defaulting owner.

It is doubtful whether once having provided the support the council would have to maintain it, since the general rule outlined in *Jones* v. *Pritchard*, *supra*, would no doubt apply.

Conveyancing under the Planning Acts

By HAROLD POTTER, LL.D., Barrister-at-Law

[*Continued from* [1951] J. P. L. 135]

Collateral Obligations

(iv) *Preservation of amenity*

Under s. 33 a notice may be served on the owner and occupier of any garden, vacant site or other open land requiring the abatement of any " condition " seriously injuring the amenity of any part of any area of the planning authority. If such a notice has been served it must be registered as a local land charge within twenty-eight days of such service. Since an abatement notice must arise from matters obvious on inspection, in the normal case neither an intending lessee nor a purchaser, is likely to be adversely affected by the failure to register at the date of contract. The importance of registration in this case arises where no inspection is made of the property and is only another example of the importance of such inspection. So far as lessors and mortgagees are concerned it should not normally be necessary to insert any express covenant to deal with this specific point, provided that the general covenants against contravening use and compliance with notices and costs and expenses are sufficiently widely drawn. In some of the precedents we have seen the covenants are limited to " existing use " and failure to continue existing use. This does not cover this case because an abatement notice is not based upon a contravention of the permitted use but upon a " condition " that is injurious to amenity. We doubt whether the common lessee's covenant not to commit a nuisance would cover it.

This may be a convenient place to point out that so far we have mainly discussed matters in which a notice must at some stage or other be served upon the owner and usually upon the occupier also. " Owner " is defined by the Act in curious terms, namely, the person entitled to the rack rent, if the premises are let, or the person who would have been so entitled if the premises were let, where the premises are not in fact let: s. 119. This does not include a mortgagee *not* in possession, but does include a trustee or agent, *e.g.*, presumably a receiver appointed by a mortgagee. Quite clearly this definition does not coincide with the conveyancer's normal meaning of "owner". For example, a ground lessor would clearly not be included, but a lessee who lets the premises at an increased rent is also not included unless in fact his increased rent is a rack rent. Therefore, in any lease of any length of term the lessor will have to assume that he may not be within the definition of owner. Equally, of course, a mortgagee is not within the meaning of the term, but so far as any compensation is payable under ss. 20, 22 and 27, this will be paid to the first mortgagee under Schedule IV (3) and applied as proceeds of sale under the mortgage. Nevertheless, it appears to be obvious that mortgages and leases should in these circumstances contain a covenant by the mortgagor or lessee to supply copies of any notices or orders issued or made under the Act.[1] At the same time there are now such a number of possible notices outside the provisions of the Act, such, for example, as requisitions, that there is much to be said for the covenant being expressed in terms wider than the Act and possibly to include a right of entry to ensure that such notice is carried out. As in many cases a notice may be a proposal to make an order, etc., to which objection can be taken, a further provision requiring the lessee or mortgagor to make such objection, if so required, may be inserted. This last provision should not, perhaps, be inserted as a matter of course and it will depend upon the circumstances of the parties. This particularly applies in the case of mortgages.

Where a clause in the form included at the end of this article is inserted, it may be desirable to modify some one or more of the other clauses now increasingly put into leases and mortgages. So many clauses have been issued as precedents without much regard for other clauses that there is a danger of ambiguity arising from overlapping provisions.

(v) *Compulsory Acquisition*

Compulsory acquisition may follow either from designation for compulsory purchase under the development plan or from an order made for one of the innumerable specific purposes. The only substantial difference between the two cases lies in the length of notice of possible interference. Land should not be designated for compulsory purchase unless it is contemplated that the purchase will be made within ten years, but the plan can be altered or amended at any time and must be reviewed every five years: s. 6. Consequently, no purchaser or lessee can be reasonably assured that the land will not be compulsorily acquired in the not distant future. Obviously, where the land is situated in a development area the degree of probability is higher, but the range of purposes for which compulsory acquisition is now available under the planning or other Acts is so wide that it is a possibility even in remote agricultural areas.

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[1] See Precedent, *post*, p. 200.

Apart from the fact that compulsory acquisition may prove nearly disastrous for business concerns carrying on their businesses on the land acquired, any person having an interest in land may be affected, because the land will be acquired at the "existing use" value. It seems to be the general opinion that land is now commonly changing hands at values above the technically controlled "existing use" value. One result of this state of affairs is that land has a kind of speculative value in anticipation of the failure to suffer compulsory acquisition. It is the reverse side of the picture when in bygone days speculators were accustomed to buy up land on the rumour or anticipation that it would be compulsorily acquired.

From the point of view of the purchaser there is little he can do to protect himself against compulsory acquisition. He can search for compulsory designation with the planning authority or for a registered compulsory purchase order in the local land charges register before contract and, *if* the vendor is willing, can insist on a clause for rescinding the contract if a compulsory purchase order is made or proposed prior to completion. Otherwise his only protection is to refuse to pay a price above the "existing use" value and, if he needs the property for development and cannot get it at the existing use value, he can approach the Central Land Board: see *Earl Fitzwilliam's Wentworth Estates* v. *Minister of Town and Country Planning* (1950), 1 P. & C. R. 169; but it by by no means follows that he will get his land.

Lessors and mortgagees, however, are differently placed. A trustee mortgagee is more than ever under the necessity of employing a valuer to value the security and get the protection of the Trustee Act, 1925, s. 8. Obviously the purchase price is not necessarily the "existing use" value and equally obviously in some cases valuers will themselves have to consider what value a trustee should consider to be the value, because of course, the difference between "market value" and "existing use value" is new to the law. Whether the Court will regard it as proper for the valuer to take into consideration the improbability or otherwise of compulsory acquisition remains to be seen, but it must at least be remembered that the trustee will be protected only if the surveyor recommends the investment and it is of a proper character: see *Re Hunt's S. E.*, [1905] 2 Ch. 418; affd., [1906] 2 Ch. 11; *Re Solomon*, [1912] 1 Ch. 261.

Leaving aside, however, the trustee mortgagee, a mortgagee is not hampered in his security, because either the authority must acquire his interest (see Lands Clauses Consolidation Act, 1845, s. 108) or else it acquires the land subject to the mortgage. Therefore, so long as there is no registered compulsory purchase order there seems to be no reason, apart from the question of value, why he should not take a mortgage in the normal way. But it may be convenient here to point out that s. 110 of the Lands Clauses Consolidation Act, 1845, provides expressly for the case where the value of the security is less than the amount of principal and interest due: "compensation" can be fixed by arbitration. Therefore if the "existing use" value is less than the amount secured the mortgagee would not be protected.

It must also be borne in mind that compulsory acquisition does not necessarily apply to the whole of the land, but under the Acquisition of Land, etc., Act, 1946, Sch. II (4) part of a building including a manufactory or garden cannot be taken compulsorily unless under the conditions contained in that paragraph. In effect, therefore, the value of the security will not be affected except that part of the capital value may be lost. This capital value will presumably be repaid to the mortgagee when the authority acquire his interest charged on the land acquired. Otherwise they would only acquire the land subject to the mortgage.

A lessee is more directly concerned with compulsory acquisition. His term of years must be acquired separately from the reversion and to this extent he is in the same position as the freeholder. If part only of the premises is taken the rent and covenants are apportioned by the effect of s. 119 of the Lands Clauses Consolidation Act, 1845, and the tenant is entitled to compensation for severance: *ibid.*, s. 120. The right to compensation includes compensation in respect of any right to a renewal of the lease: *Bugg* v. *Midland Ry.* (1867), L. R. 4 Eq. 310 (as distinct from probability of obtaining such a renewal; *Ex p. Nadin* (1848), 17 L. J. Ch. 421). In these circumstances the lessor may normally argue that there is no ground for any special provision in the lease. The lessee must take the same risk as any other landholder and rely upon compensation obtained on compulsory acquisition to satisfy himself. This argument may be regarded as applicable equally where only part of the premises are acquired notwithstanding that this may make the premises wholly unsuitable for the purposes for which the lease was obtained. It is thought, however, that where the lease imposes capital outlay upon the lessee, such as the erection of buildings, the argument may not be wholly acceptable in every case where part only of the premises are compulsorily acquired. If the covenant continues to affect the land not so acquired the lessee may remain under an obligation to carry out the covenant notwithstanding that he cannot in effect get any benefit, because the premises would in any event be unsuitable for the purpose for which they are leased. This would particularly apply where there was a covenant to use for a specified purpose. Consequently when there is a lease for " development " purposes the parties should address their minds to the problem of frustration and consider how far, if at all, there should be a release from covenants involving capital outlay, if these purposes are frustrated before the development has in fact taken place. As we have pointed out elsewhere a general provision may often be desirable in connection with " use " and if this is inserted and the lessor agrees, it could be extended to frustration arising from compulsory acquisition of part of the premises.

PRECEDENT

Covenant to Supply Copies of Notices, etc.

(*a*) The lessee [mortgagor] within —— days of the receipt by him of the same [give full particulars] *or* [supply a copy] to the lessor [mortgagee] of any notice or order or proposal for a notice or order made given or issued or any licence consent or permission given or issued to the lessee [mortgagor] [or to any underlessee] under or by virtue of the Town and Country Planning Act 1947 [or any notice requisition or direction given or made by any third party] affecting the premises or likely to affect the premises hereby demised [mortgaged] and will on demand produce to the lessor [mortgagee] such notice order licence permission requisition or direction.

(*b*) the lessee [mortgagor] will [subject as hereinafter provided] without delay and at his own expense take any reasonable or necessary steps to comply with any such notice order licence permission [or direction] and will permit the lessor [mortgagee] at all reasonable times to enter upon the premises hereby demised [mortgaged] to inspect the same for the purposes of ensuring that any such notice order licence permission [or direction] shall have been duly complied with.

[(*c*) the lessee will at the request [and cost] of the lessor make or join with the lessor in making such objection or objections or representation or representations against or in respect of any proposal for a notice or order [requisition or direction] as the lessor may deem expedient.]

More Miscellaneous Comments

By W. A. Leach, F.R.I.C.S.

Interference with Servitudes, etc.

S. 22 of the Town and Country Planning Act, 1944, as incorporated in Sched. XI of the 1947 Act authorises the erection, construction, carrying out or maintenance of buildings and works in conformity with planning control on land acquired under or appropriated to the purposes of ss. 38, 40 or 43 of the 1947 Act, notwithstanding that this would result in an interference with an easement or other servitude or be a breach of a restriction as to user imposed by contract. By para. 19 of Sched. XI of the 1947 Act, land purchased by local authorities under Part I of the 1944 Act is to be deemed, as from July 1, 1948, to have been acquired under s. 38 or s. 40 of the 1947 Act.

It will be noted that s. 22 authorises works, and the phrase " restriction as to user " is employed in relation to this authorisation. Therefore, " user " would seem to apply to " user " for erecting buildings, etc., and not to " use " in the town planning sense, *i.e.*, a restriction as to use of the land for erection of a building, etc., may be disregarded, but not a restriction as to use of land for other purposes.

This would also seem to follow from the fact that any claim for compensation for injurious affection arising from the breach of the restriction as to user must be formulated under s. 68 of the Lands Clauses Act, 1845, for para. (1) (*d*) of Sched. V of the 1944 Act provided that works authorised under Part I of that Act were to be deemed to be included in the expression " execution of the works " in s. 68 of the 1845 Act, and para. 1 of Sched. II of the Acquisition of Land (Authorisation Procedure) Act, 1946, now provides in different manner to the same effect where land is acquired thereunder in relation to works carried out under the " special Act " by the acquiring authority. In the present case the 1947 Act is the Special Act (s. 38 (4) and s. 43 (3), and see s. 40 (2) as to land purchased by agreement) and works under s. 22 in Sched. XI are works to which s. 68 of the 1845 Act will be applicable. S. 45 (7) (*a*) reinforces the application of s. 68. Therefore there is a *prima facie* right of claim under s. 68 in respect of any interference with a servitude or breach of restriction as to user arising under s. 22. The claim must, of course, qualify according to the tests to be applied under s. 68, for there is nothing modifying the operation of that section.

S. 22 goes on to provide that a claim may be made in the same manner and subject to the same rules as under s. 68 of the 1845 Act, thereby excluding the 1919 Act (see s. 110 of the 1947 Act). This, it would seem, may not be intended to give a right of claim, which as already shown, is otherwise established, but simply to lay down the procedure for settling the claim and the measure of compensation to be awarded. S. 45 (7) (*a*) also provides for the claim to be made against the person carrying out the development and not against the acquiring authority. The Lands Tribunal would seem able to deal with this under s. 1 (5) of the Lands Tribunal Act, 1949, provided the claimant has exercised his right of choice of arbitration under s. 68 of the Act of 1845.

The point is of greater importance where land has been acquired from the claimant. The works authorised by s. 22 in Sched. XI of the 1947 Act are works for which injurious affection may be claimed under s. 63 of the 1845 Act (s. 45 (7) (*a*) of the 1947 Act and para. 1, Sched. II of the 1946 Act). The normal position is that in a claim under s. 63 all foreseeable damage arising out of the acquisition must be claimed and any possible injurious affection from what may be done on the acquired land should be included in that claim.

S. 119 (4) of the 1947 Act provides that references in that Act to compensation for the compulsory acquisition of land include injurious affection, etc. (that is, injurious affection arising on a claim for the compulsory acquisition of land and not injurious affection where no land is taken from the claimant) so that the claim for any injurious affection which may arise under s. 22 in Sched. XI should be included in the normal claim made in response to the notice to treat. If it is not so included it is far from certain that s. 22 gives a subsequent right of claim when damage is suffered; it may be that it does no more than provide that that part of the claim is to be settled in a different way and on a different basis. Also, despite s. 45 (7) (*a*), as the claim is made as part of the acquisition claim it would be made against the acquiring authority, and at that stage there would usually be no actual works or damage and nobody other than the acquiring authority to whom s. 45 (7) (*a*) could apply. The Lands Tribunal would seem to have power to deal with this part of the claim under s. 1 (5) of the Lands Tribunal Act, 1949, if it exceeds £50 and the claimant has exercised his right of choice of arbitration under s. 23 of the Act of 1845.

Reduction of Claims for Loss of Development Value on Grounds of Disturbance, Injurious Affection, and Severance

In its main statement on the subject of the reduction of claims for loss of development value on grounds of disturbance, injurious affection and severance ([1949] J. P. L. 111) the Central Land Board observe :—

> " The intention of these sub-sections ((6) and (7) of s. 61) is obvious. It is to prevent a claimant ' eating his cake and having it '. The Board consider that the wording accurately carries out this intention ".

As will appear, an old adage that the pleasures of digestion and possession cannot be co-existent has been promoted to the status of a rule of law and dominates the Board's approach to the interpretation of the sub-sections in question. As will also appear, the " intention " is carried out more effectually than equitably so that whether it is carried out " accurately " may be a matter of opinion.

Disturbance.

The statement then deals with sub-s. (7), relating to disturbance and refers to the decision of the Court of Appeal in *Horn* v. *Sunderland Corporation*, [1941] 2 K. B. 26. It was there decided that when the whole of a farm, which had a high value for building development, was compulsorily acquired, compensation for disturbance should only be awarded to the extent (if any) that the value of the land, based on the hypothesis that it would be used only for farm purposes, together with the compensation for disturbance, exceeded the value of the land for building.

The Board state that in their view sub-s. (7) was designed to meet the point raised by this case. Accordingly in so far as the owner of land in respect of which a claim is made for a payment could realise the development value of his land only by a sacrifice in respect of his present use of the land, the development value will be reduced by the appropriate amount.

It is, however, difficult to see the connection between the sub-section and *Horn's* case. The case *limits* the *addition* for disturbance whereas s. 61 (7) provides for a *full deduction.* The sub-section has its own merits and gains nothing from irrelevant case law.

Injurious affection and severance.

The statement then deals with severance and injurious affection under s. 61 (6), and refers to two widely differing constructions of sub-s. (6) which have been brought to the attention of the Board :—

> " (A) To illustrate the first construction, one has to assume a factory with two acres of vacant land adjacent in one ownership. The vacant land is held in reserve for the purpose of extending the factory, but it is suitable for the erection of a separate factory which, when erected, would not in any way injuriously affect the existing factory. A claim is made for the loss of development value of the two acres only. It is argued that the language of sub-s. (6) is compelling and would force the Board to make a deduction for severance and for injurious affection from the open market value of the two acres, notwithstanding that the vacant land had been valued on the basis that the special suitability of the land for extending the existing factory must be ignored in compliance with r. 3 of s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919.
>
> This construction would be entirely unjust to claimants. The Board do not think the words of the sub-s. produce this result and *they will not seek to make any deduction from the unrestricted value where the claimant selects a unit of land on which the particular kind of development, on the prospect of which the unrestricted value depends, could be carried out without causing loss by severance or injurious affection to the 'other land'* held in the same ownership by the claimant."

It may be doubted whether in the circumstances given in illustration (A) r. 3 would be applicable ([1951] J. P. L. 86).

In calculating the unrestricted value of, say, land adjoining an isolated factory and suitable for the extension of the factory but with no other likely demand for it for factory purposes, r. 3

would operate and the special value of the land to the owner of the factory would have to be excluded (disregarding for the moment the Treasury request to the Central Land Board not to apply r. 3 in certain cases ([1951] J. P. L. 98)). If there was no other substantial demand for development purposes the unrestricted value might be very small. It is, however, postulated in (A) that the land is suitable for an independent factory.

In the case of restricted value s. 61 (2) limits the scope of development for purposes of valuation to developments falling within the Third Schedule to the Act. Thus where a claim has been made for land adjoining a factory as a separate parcel, although in the curtilage of the factory, only one person, the owner of the factory, could develop the land by exercising the tolerances of the Third Schedule and its special value for that purpose to him would have to be disregarded. The land as a separate parcel does not enjoy tolerances and the factory owner can only be regarded as a special purchaser.

In a later statement ([1949] J. P. L. 335) the Board recognised this fact and qualified the decision quoted above in italics to the effect that if the unit of claim was all the spare land, it would not be legal for them to include in the restricted value thereof the value of the Third Schedule tolerance for enlarging the factory and they would be forced to make a deduction from the unrestricted value for injurious affection and severance.

It is difficult to see in what way the words of sub-s. (6) ("there shall be deducted") are not compelling whenever they may be applied, or to find therein any support for the Board's original statement, however just it may be. There is no provision in the Act that the Board shall exercise their powers in accordance with principles of justice and equity and it is not to be supposed that Parliament would have surrendered its prerogatives if such a clause had been included in the original Bill.

> "(B) The second construction is based on the argument that, since sub-s. (2) (*b*) of s. 61 . . . requires the unrestricted value to be 'taken to be the value . . . as if the provisions of this Act other than this and the next following section had not passed', the same (*i.e.*, *pre*-Act) assumption has to be made for the purpose of computing any deductions for severance and injurious affection. It

> is then suggested that the decision in *Horn* v. *Sunderland Corporation* would, in many cases where the land under claim had high development value, preclude any additional compensation for severance and injurious affection to the 'other land' and that nothing can, therefore, be deducted under sub-s. (6). The Board are quite unconvinced by this argument.
>
> As stated above, the Board propose to make deductions under sub-s. (6) or (7) where the development, on the prospect of which the unrestricted value depends, would have involved the claimant himself in loss or damage assessable under the headings mentioned in either sub-section."

Horn's case, *supra,* is concerned only with disturbance and not with injurious affection of severance. It is clear from the judgment of Scott, L.J., in that case that there are two heads of claim, (1) for the land taken in which disturbance is included and (2) for injurious affection of "other land" and severance. The judgment does not apply to (2) and the argument in (b) would seem, therefore, to be pointless; but were it otherwise, the attitude of the Board, meritorious as it may be in equity, would seem to find little support in the words of the section concerned.

Now we have the new Treasury request to the Board to disregard r. 3 in certain cases.

It is clear that the application of compulsory purchase principles and the reverse application of certain compulsory purchase heads of claim do not produce fairness or clarity, even ignoring the problem of how compulsory purchase provisions can be applied where the claim is in respect of part of a building.

The obvious answer to all these difficulties would seem to be amending legislation to get to the only firm ground, "What is the owner's loss?" The loss of the owner involves ignoring r. 3 in all cases and deducting from the claim the value of, (a) if the claim rests on an independent development of the land which is the subject of the claim, any loss or damage the claimant might unavoidably sustain from the sale or utilisation of such land for that development (any means of mitigating that loss or damage being taken into consideration so far as appropriate in valuing the land which is the subject of the claim, *e.g.*, the notional creation of an easement for the benefit of the "other land"); or (b) if the claim rests on the development of such land with other land of the claimant, any unavoidable loss or damage he would suffer in carrying out that development, being loss or damage not already allowed for in arriving at the value of the land to the claimant.

Leasehold Interests and Section 62 (2)

A problem arises where land would have development value if the landlord were in possession but where the landlord, not being in possession, can only make a deferred claim falling within the *de minimis* limitation, and the tenant, having an insufficient interest to warrant development, cannot justify a claim at all.

It is submitted that there is nothing to bar a claim if it can reasonably be maintained that the two parties would have got together and made a businesslike arrangement (especially if there is supporting evidence of similar arrangements on the same estate in the past), and that in consequence the purchaser of either interest would have offered more for it as unrestricted because of the possibility of such an arrangement. It is not thought that where the development would contravene the covenants of the lease, s. 62 (2) demands of the tenant a strict adherence thereto throughout the term. Further, s. 62 (2) refers to the *performance* of the obligations of the lease, but a covenant not to alter buildings or not to erect further buildings, or not to use except for a specified purpose is *observed* rather than performed. Again a tenant who acts contrary to the terms of a covenant with the consent of the landlord is not in breach, and is not failing to perform the covenants of the lease, at any rate where the covenant is " not without the landlord's consent ". It may be otherwise where the covenant is absolute for then it may be a proper view that something new is being set up in place of the provisions of the lease. The sub-section does, however, preclude the idea of a surrender of the tenant's lease and hypothetical arrangements for exploiting the development value must be founded on the continued existence of both interests. In short, the landlord let the land for X years and it will not be until the expiry of X years that he can come into possession unless he has an option to determine the lease or it would pay the tenant to exercise any option he has for determination (otherwise than owning to his inability to fulfil his obligations).

S. 62 (2) does not require the assumption that the tenant's covenant to pay the rent provides a gilt-edged security. Whenever a property is purchased, it is not a normal assumption that the tenant will fail to pay the rent. The sub-section seems to do no more than provide that it is not to be assumed, however probable it may be, that any ground of forfeiture will arise, or that a surrender will be arranged. It would be inconsistent with any conception of market value (and r. 2 of the 1919 Act applies to these valuations) to say that all lease rents are to be valued as equal to interest on Government Stock.

The provision of s. 62 (2) that it is to be assumed that the tenant will exercise any option he may have if it would be to his advantage to do so is not clear where a lease has been disclaimed under the Landlord and Tenant (War Damage) Acts since July 1, 1945. The right of disclaimer under these Acts is in the nature of an option: s. 62 (2) does not require the option to be contained in the lease and a statutory option would seem to be within the phraseology. S. 8 of the Landlord and Tenant (War Damage) Act, 1939, provides, however, that a lease subject to a notice of disclaimer shall be deemed to be *surrendered, not determined*, and this may import some element of doubt.

Possibly, however, an express option to surrender a lease would, in certain circumstances, be accepted as equivalent to an option to determine within s. 62 (2) although there are technical differences between surrender and determination. Moreover, the statutory right under the 1939 Act is to disclaim, which is, in effect, to determine the lease, and the provision as to deemed surrender simply modifies the full effect of determination to keep alive sub-leases. Where the tenant has in fact exercised an option (or disclaimed—the right to do so is an option) then assuming he acted without any other inducement, this will usually be good evidence that what he did was to his advantage.

The reversionary value as on the " appointed day " would, in the event of the option thus being exercised, have to be estimated on the assumption that on that day an early determination of the lease was probable.

Parliamentary Intelligence

Town and Country Planning Bill

On February 19, 1951, in the House of Commons, the Town and Country Planning Bill was considered in Committee of the whole House[1] (H. C. Debates, Vol. 484, col. 898):

Clause 1—Inclusion of certain war damage works in definition of development

Mr. Molson moved an amendment to the effect that the clause should not apply to works for making good war damage unless the cost would exceed £200. He did not criticise the principle of the measure, but did not think it desirable that the restriction which the clause imposed should apply to small repairs made necessary by the original war damage.

Mr. Dalton, Minister of Local Government and Planning, replied that war damage in small scattered areas had nearly all been repaired, and in any case, restoration was permitted under the General Development Order. The clause applied only where directions were in force. These related to the heavily war damaged areas, and moreover the usual practice was for works to a value of £100 to be excluded from the terms of a direction.

The amendment was, by leave, withdrawn.

Mr. Irvine said that it had been pointed out to him that the point which he had raised on the Second Reading debate was partly covered by the provisions of s. 51 of the Act. If war damaged land in respect of which a value payment was payable were compulsorily acquired, the compensation payable to the owner would be assessed upon the assumption that planning permission for the rebuilding would be granted free of development charge. But difficulty would still arise because the land might not be compulsorily acquired, and even where a purchase notice was served by the owner the Minister might not confirm the notice but instead might grant permission for some lesser development, such as to rebuild two storeys of a house which previously consisted of four storeys or to build a house set further back. Development such as that might amount to a "reasonably beneficial use" of the land, but the owner would receive no compensation at all as the development would be within Part I of the Third Schedule, and he would be at a disadvantage compared with the owner of a house which had not suffered war damage, which could be completely taken down and rebuilt.

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[1] For a report of the debate in the House of Commons on the Second Reading of the Bill, see [1951] J. P. L. 160.

Mr. H. Strauss pointed out what appeared to be a small drafting mistake in the proviso to clause 1 (3)—"works being such as aforesaid".

Mr. Hay referred to the position where an owner was entitled to a cost of works payment. The money could be used to carry out works only on the identical site of the war damage unless this was dealt with by administrative action, which might not be possible in the case of a stubborn local authority. Could not provision be made for a "portable costs of works payment"?

Mr. Dalton said that in practically every case of blitz, purchase notices were confirmed and Mr. Irvine's point did not arise. But even in a case where it did happen, the owner would be entitled to compensation under s. 20 (3) of the Act.

A formidable case could be made out against allowing "portable cost of works payments", but this question was in any case outside the scope of this Bill.

Clause 1, *and also clauses* 2 *and* 3, *ordered to stand part of the Bill.*

Clause 4—*Short title, citation and construction*

Mr. Molson moved that the word "(Amendment)" should be inserted in the short title of the Bill, in the interests of simplicity and accuracy.

Mr. Dalton did not resist the amendment.

Amendment agreed to and the amended clause ordered to stand part of the Bill.

Bill reported with the amendment, and read a Third time.

On February 27, 1951, the Town and Country Planning (Amendment) Bill was considered in the House of Lords (H. L. Debates, Vol. 170, col. 616):

Lord MacDonald of Gwaenysgor, Paymaster-General, moved the Second Reading of the Bill, and stated that the purpose of Clause 1 was not to discriminate against the victims of war damage, but only damage from enemy action is extensive enough to present any opportunity for replanning, whilst any extension of the clause to achieve consistency would unnecessarily widen control.

Lord Llewellin thought that the Bill would be acceptable in all quarters of the House. Having regard to the assurances which both the Minister and Lord MacDonald had given that the Minister would look through all the directions made under the General Development Order to see that small repairs to war damaged property did not require an application for planning permission, he was prepared to accept the measure without amendment.

Bill read a second time, and committed to a Committee of the Whole House. Read a Third time and passed on Thursday, March 8, and has since received the Royal Assent.

Bill to Amend Section 52

On February 28, 1951, in the House of Commons (H. C. Debates, Vol. 484, col. *2109*) :

Mr. Hutchinson moved that leave should be given to bring in a Bill to amend the provisions of s. 52 of the Act of 1947, which contains the temporary "notional lease" provisions designed to eliminate from the compensation payable in respect of the acquisition of land, the special value attributable to vacant possession. He said that great injustices resulted in the case of a house occupied by the owner. A local authority who compulsorily acquired such a house turned the owner out and paid him compensation deliberately assessed at a figure which would be insufficient to purchase another house with vacant possession.

Mr. R. Williams said that before the 1947 Act, the owner-occupier of premises which were compulsorily acquired received the 1939 value plus 60 per cent. The 1947 Act put him in a better position than before, full market price being paid subject to a deduction based on a notional lease expiring on January 1, 1954, to ensure that the local authority should not have to pay scarcity value. Some owner-occupiers did not require, and others could obtain, alternative accommodation.

There were very few cases of hardship, and it would not be possible to deal with them except by retrospective legislation.

The House divided and the motion was rejected, 222 *being in favour and* 245 *against.*

Replies to Questions in House of Commons

The following Government replies have been made to questions in the House of Commons.

February 13, 1951 (H. C. Debates, Vol. 484, col. *46*):

Total of development charges

In a written reply to Mr. Hale, the Minister of Local Government and Planning (Mr. Dalton) stated that up to the end of January £5,300,000 had been paid in development charges, and a further £3,486,000 set off against near ripe claims on the £300 million fund. It was not yet possible to give a close estimate of annual revenue from this source.

February 20, 1951 (H. C. Debates, Vol. 484, col. *172*):

Development charge on agricultural workers' hostels

In a written reply to Mr. Heald, the Parliamentary Secretary to the Ministry of Local Government and Planning (Mr. Lindgren) stated that in future where a farmer erects a hostel for his own agricultural workers, no development charge will be payable so long as the hostel continues to be so used.

February 27, 1951 (H. C. Debates, Vol. 484, col. *272*):

Advertisement Regulations: Appeals, Statistics

In a written reply to Mr. Russell the Minister of Local Government and Planning (Mr. Dalton) said that from August 1, 1948, when the Advertisement Regulations came into force, to the end of 1950, 2,116 appeals had been dealt with of which 662 were allowed and 1,126 dismissed, the figures for each year being 1948, 2 allowed and 3 dismissed; 1949, 389 and 257; 1950, 271 and 866. Both parties always had an opportunity to state their case either in writing or, if necessary, at a hearing.

Mineral Workings Bill

The chief purpose of the Mineral Workings Bill, which was introduced in the House of Commons on February 14, 1951, is to give effect to the Government's policy on the restoration of land after iron ore workings, as outlined by Mr. Dalton in the House of Commons, on July 4, 1950,[2] *viz.*, to ensure that, while full production of iron ore is maintained, the land worked will be restored to agriculture as completely and as speedily as possible.

The new Bill provides for an Ironstone Restoration Fund to be established to achieve this object. Payments to the fund are to be on the basis of a levy of 3d. for each ton of ironstone worked opencast after July 1, 1951, in an area comprising the counties of Leicester, Northampton, Oxford, Rutland and Warwick, and parts of Kesteven and Lindsey in the County of Lincoln. Of this 3d. levy the ironstone producers will pay 1⅛d., the landowners 1⅛d., and the Exchequer ¾d., 75 per cent. of the cost of restoration thus being borne by the producers and royalty owners, and 25 per cent. by the Exchequer, in accordance with the announced policy.

Payments out of the fund can be made to meet costs incurred by ironstone producers in levelling land after ironstone working. Such payments will be made only where the overburden (the material overlying the ironstone seam) is thirty-five feet or more deep, and the costs which will be met will be the excess over the average cost of levelling land with a thirty-five feet overburden. Where the overburden is less than thirty-five feet, no payments will be made.

Other payments will be made out of the Ironstone Restoration Fund for costs incurred by landowners or local authorities in making land already worked suitable for agriculture or forestry and improving its general appearance; costs of managing and cultivating worked ironstone land by the Ministry of Agriculture and Fisheries or their lessees; and the costs of forestry work carried out by the Forestry Commission or landowners. These provisions will apply to areas left derelict in the past as well as areas worked in the future.

The Bill also contains clauses affecting the payment of development charges and the receipt of payments from the £300 million fund.

In June, 1949, the Chancellor of the Exchequer promised[3] that mineral undertakers would get a full payment from the £300 million fund for land held by them when the Town and Country Planning Act, 1947, came into force. Since then, the Central Land Board have held discussions with representatives of the claimants concerning arrangements for setting off development charge against payments from the fund in these cases, and the Bill contains a provision to enable a set-off scheme to be made.

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[2] [1950] J. P. L. 713.

[3] [1949] J. P. L. 426.

There are in addition certain minor amendments to the Town and Country Planning Act in relation to mineral working generally, including a clause to enable highways to be diverted temporarily.

Development in Barsetshire

Contravening Development in Residential Area

S, a Solicitor, is found interviewing C, his Client

S. If I've got this plan clear, the red coloured oblong is a shed in the garden of your house, and the area coloured green is in fact an outhouse, although it is physically connected with your home.

C. That's right. I started the business in the outhouse and I put up the shed later on.

S. Now that I have my bearings on the plan, let me look through those Enforcement Notices again. The first one requires you within three months to discontinue the use of the building coloured green—that's the outhouse—for purposes in connection with the trade of a wood merchant. The second notice requires you to remove or demolish the building in your garden.

C. They've no right to do that. I work my circular saw in the outhouse for one thing and it is absolutely essential I retain it. They're trying to force me out of business that's what they're doing.

S. Tell me, when did you start this business?

C. Oh, long before the war. I think it was late 1935 or early 1936, but I just can't be sure.

S. It may be very important to find out.

C. I expect the missus will remember and the Electricity Company could say when they put the power in for the saw couldn't they?

S. Yes, I think so. The point is this. Barchester was not subject to a town planning scheme under the old town planning law, but it became subject to a resolution to prepare a scheme in March, 1936. That means that there was virtually no planning control before March, 1936, and if you can prove you started your business *before* control came in, you will be all right.

C. You mean they can't stop me carrying on if I can show I started up before March, 1936?

S. Exactly.[1] What was the outhouse used for when you took it over?

C. It was a wash-house.

S. Are you sure it had no previous history of industrial use—before you bought the place I mean?

C. Not that I know of.

S. In that case your starting up with your saw would have amounted to a change of use for which you ought to have got permission.

C. I never knew I had to get permission. Besides, since 1936 I've expanded and if these notices go through I shall have to stand four men off. They should have stopped me before I got established. It's not fair to stop me now.

S. Well, don't worry about it too much. I think from what you say I may be able to show on that first notice that you've not been guilty of contravening previous planning control.

C. Because there was no control then?

S. Yes. If you can establish that date I will enter an appeal against the notice at the local magistrates' court. We ought to have their sympathy because you have been allowed to go on without let or hindrance since 1936. Mind you, there is still the second notice to deal with. But first, did both these notices come quite out of the blue? Have you had no previous warnings from the planning authority?

C. Well, of course there was the trouble during the war about the hut in the garden, but I reckon it is really Mrs. Loscoe behind this. She is an old . . .

S (*hurriedly*). Tell me about the war time trouble first.

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[1] S. has overlooked the possibility of an order under s. 26, Town and Country Planning Act, 1947, but this would involve the payment of compensation.

C. I was being pressed by the Ministry of Fuel during the war to turn out more firewood. You remember how short it was, and I got allocations of wood that was no use for other purposes. Mind, I had always been doing some firewood business, but mostly it was done out of doors under a tarpaulin. So in 1944 I applied for permission to put up a hut to do the work under cover and provide for storage. They turned me down. Said it was the wrong place to put it.

S. "Undesirable industrial development in a residential area" no doubt! But did you erect the hut in spite of the refusal?

C. Actually, I had erected it *before* I applied for permission. The local authority wrote two letters asking me to remove it, and then the whole thing died down. After all, during the war, plenty of local councillors were buying firewood cut on my premises, if only they had known it!

S. It looks to me as though the planning authority have a clear-cut case on the second notice relating to the hut in the garden. It will be said that you have deliberately defied the previous planning authority.

C. How do I stand then?

S. On the second notice, the one relating to the unauthorised hut, our only course is to apply for permission to keep it.

C. But if the planning authority have served this notice there is no hope of them granting me permission, is there?

S. You must not forget that the purpose of the notice may be simply to enable conditions to be placed upon your continuing, *e.g.*, to stop your circular saw working at week-ends.[2] They may not want to stop you altogether. You see, after July 1 this year they would lose for ever any chance of controlling your activities. Even if I am wrong on the planning authority's intentions, you can still appeal to the Minister.

C. Your mentioning the possibility of stopping the saw at week-ends reminds me of the trouble about the saw mill in 1944. That Mrs. Loscoe got several people in the road to sign a petition complaining about the noise, and I got a letter from the local authority. Of course I was working the saw mill till ten at night then. I guess she's behind the present trouble—Mrs. Loscoe I mean.

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[2] See s. 75 (4).

S. Complaints about the saw mill won't affect the legal position on the first notice but they may spoil your chances of getting permission for the hut in the garden. If there's a lot of local feeling obviously your chances of getting that permission are smaller.

C. I think it is mainly the noise from the saw which brings complaints; the machines for cutting and bundling the firewood in the shed in the garden don't make much noise. I admit the garden is a bit untidy—I have to keep my timber supplies somewhere. But I could get some people in the road to support me. There is Smith at 21, Dugdale, and Carver at . . .

S (*suspiciously*). Who are they?

C. They work for me.

S. Hardly unbiased witnesses! But I won't overlook the possibility of rounding up some local support for you. Meanwhile I will get busy on making a town planning application, which as a precaution I will extend to cover the subject of both enforcement notices. I will at the same time write to the planning authority and ask them to defer deciding on the applications until the result of the appeal to the magistrates' court on the first notice is known.

C. Can't we go straight ahead with the planning application and leave the court case?

S. No, I don't advise it. If we can win that appeal it will strengthen your case to have the other half of your business legalised. Indeed there would be little point in refusing permission for the shed in the garden if they can't stop the circular saw.

C. I get it. One last question. Will I have to pay development charge if I get the planning permission to keep my business going?

S. No. There won't be any.[3] I'll come and see your place to-morrow and you can tell me whether you have fixed the date when you started your business. When I know that we can finally decide upon the best line of action.

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[3] See s. 75 (7).

Central Land Board Practice

Single House Plots

CLB/39.

[*Note.*—This is printed at p. 168, *ante*, but the date of issue is January 4, 1951, and not July 4, 1950, as there stated.]

Claims on the £300 million fund

As reported previously ([1951] J. P. L. 98), the Chancellor of the Exchequer stated in Parliament on December 15, 1950, that he had authorised the Central Land Board to value certain claims made under Part VI of the Town and Country Planning Act, 1947, on the basis of disregarding one of the provisions of rule 3 of s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919. He also said that if potential claimants, who omitted to put in claims within the time limit because they were of the opinion that the application of rule 3 would render a claim fruitless, notified the Board, their cases would be carefully recorded for such consideration as it might be decided to give them at a future date.

The Central Land Board have now announced that owners who notify the Board in this way will, if the Board consider that their case is one referred to in the Chancellor's statement, receive two copies of an adapted form S.1, one of which is to be completed and returned within three months of receipt. The forms will be endorsed to the effect that they are issued for record purposes and do not constitute claims on the £300 million fund.

The Board's letter accompanying the forms will give guidance as to how they should be completed, and will make it clear that no information can yet be given on the treatment of these cases.

Lands Tribunal Decisions[*]

Huggett and Huggett v. Leicester Corporation (Ref. 28/1950, February 16, 1951). This was a claim for compensation in respect of the compulsory acquisition of the site of a house in Leicester destroyed by war damage, for which a value payment had been made. Notice to treat was served on October 5, 1949. The house had been one of the middle houses in a terrace of four and had been used as a hostel providing inexpensive accommodation for University students. The area of the site was about 318 square yards.

During 1949, the Corporation had bought thirteen plots of land in the same street by free negotiation, and had paid 14s. per square yard in each case.

The Tribunal (Cecil H. Bailey, Esq., b.sc., m.i.c.e., f.r.i.c.s.) did not accept submissions for the applicant that a value of £300 adopted by the Corporation in respect of land when fixing the maximum controlled selling price for a new house was relevant, and that the value of the site was above average because the street was close to the centre of the town. Under the Third Schedule of the Act of 1947 it was necessary to assume that the house could be rebuilt without payment of development charge and also that it could be used as a hostel. But as there was unlikely to be much demand for hostels either for University students or anyone else, owing to other accommodation which was or would be available, and as it would not in fact be possible to erect a building for such a purpose owing to the local building byelaws and s. 112 of the Act of 1947, the land had no special value on this account.

The compensation was accordingly determined at 318 square yards at 14s. per square yard, *viz.*, £223.

Hollis and Green v. Nottingham Corporation (Ref. 58/1950, February 16, 1951). This was a claim for compensation in respect of the compulsory acquisition of the site of former buildings comprising a dwelling-house, bakery, and shop with living accommodation, which had been demolished in 1938 under a Clearance Order. Notice to treat was served on

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[*] Full reports of these cases will be published in Vol. 1 of *Planning and Compensation Reports.*

January 26, 1948, and the compensation accordingly was to be assessed under s. 55 of the Act of 1947.

The Tribunal (CECIL H. BAILEY, ESQ., B.SC., M.I.C.E., F.R.I.C.S.) did not accept that a value of £5 per square yard which one of the claimants said was being asked for a similar site nearby, was evidence of the value of the land acquired. It had to be assumed that the buildings could be rebuilt within the limits allowed by the Third Schedule, and used for their former purposes, but under s. 112 the rebuilding must be assumed to be limited by the need to comply with modern building bye-laws.

Evidence given by the District Valuer that eight similar plots in the immediate vicinity had been acquired by the Corporation by free negotiation at values averaging 6s. 1d. per square yard, was accepted by the tribunal. It was assumed that the effect of the notional lease under s. 52 of the Act of 1947 was present in this figure. There was a disadvantage in that the plot was small and narrow, but an advantage in regard to the permitted use as a bakery.

Adopting a figure of 6s. per square yard, compensation was assessed at £39.

Manchester and Salford Equitable Co-operative Society, Ltd. v. Manchester Corporation (Ref. 78/1950, February 14, 1951). This was a claim for compensation in respect of the compulsory acquisition of a house and land, at Rusholme, Manchester, 3.73 acres in area (1.63 acres, house and garden; 2.1 acres, sports ground), which had been bought by the claimants in 1925 for £6,000 and used as a non-residential social and sports club. The house was a large double-fronted one in moderate state of repair, with floor space of 1,224 square yards. The sports ground comprised five hard tennis courts and two bowling greens, which required an expenditure of between £665 and £880 to put them in order. The property was subject to a rent-charge of £209 14s. per annum.

The Tribunal (CECIL H. BAILEY, ESQ., B.SC., M.I.C.E., F.R.I.C.S.) was satisfied that the whole property was within Class XXII of the Use Classes for Third Schedule Purposes Order, 1948 (SI 1948, No. 955), and that the value to be ascertained was the market value of the property as a social centre or club, subject, under s. 52 of the Act of 1947, to a tenancy expiring on January 1, 1954. The premises were very suitable for the proposed purpose.

A valuation submitted on behalf of the claimant was based on the cost of building an alternative property, having regard to the annual sum required to pay off the capital cost involved, which sum could be translated into the rent which such a person would be prepared to pay for suitable premises.

A valuation submitted by the Corporation took the actual rent of a neighbouring house used by the Corporation as a school for domestic science, added one-third to this rent, and allowed for difference in floor areas, to give a rent of £325, to which was added £300 for tennis courts and bowling greens, resulting in a rent of £625 per annum, including ground rent of £210.

Having regard to the limited use to which the other house could be put, the Tribunal adopted not one and one-third but twice its value as the proper ratio, giving a figure of £475, which with an addition of £300 for tennis courts and bowling greens and deduction of £210 for ground rent left a net valuation of £510 per annum. The value of this on a short term basis for the purposes of the notional lease under s. 52, was assessed at £1,226. Thereafter, this rent as a perpetuity at 5½ per cent. deferred 4⅓ years, gave a value of £8,147. The total value was therefore £1,226 + £8,147, *viz.*, £9,373, and allowing £623 as a deduction in respect of necessary repairs, the compensation was assessed at £8,750.

Hinge & Sons, Ltd. v. Swale R. D. C. (Ref. 44/1950, February 7, 1951). This was a claim for compensation for the compulsory acquisition of about 6.522 acres of top-class agricultural land with a frontage to the highway of 528 feet, in the village of Borden, near Sittingbourne, Kent. The land was situated close to the house and farm buildings of the claimants. Notice to treat was served on December 29, 1948.

Apart from an agreed figure of £25 in respect of tenant right, a valuation of £1,465 for the land (based on rental of £8 per annum, purchase price £225, per acre) and of £180 for severance and injurious affection was submitted on behalf of the claimants, and a valuation of £873 for the land by the District Valuer on behalf of the acquiring authority.

The Tribunal (J. P. C. DONE, ESQ., F.R.I.C.S.) considered that the wide differences in price in transactions referred to by the District Valuer were an indication of the effect of situation and environment on value. Further, that certain examples of sales and lettings of land given by the claimants should not be criticised merely because they were 25 miles further away from London, the productivity of the land being the main factor. The land in question, which was under market garden crops, had many advantages (on a high road, close to farm and buildings, under surveillance from the house, easy access, frost-free area, accessible to local labour) and the Tribunal accepted the claimants' rental value of £8 p.a. per acre, *viz.*, £52 per annum, although capitalising this figure on a 3½ per cent. basis as adopted by the District Valuer. This gave a figure of £1,482, from which an agreed figure of £95 for tithe rentcharge had to be deducted and the amount of £25 for tenant right added, resulting in £1,412.

Nothing further was payable in respect of severance and injurious affection, since any loss of balance of cultural policy by the claimants was reflected in the full market value of the land, and having regard to an undertaking given by the authority at the hearing no disadvantage to adjoining land should result from access thereto being more restricted.

Wimbush v. Maggs (Ref. 64/1950, January 19, 1951). This was an appeal under rule 14 of the Acquisition of Land (Compensation for War Damaged Land) Rules, 1945, in respect of certain war-damaged property at Willesden, which had been subject to a lease for 99 years from June 24, 1892, at a rent of £2 per annum, until the land was acquired by the Willesden Borough Council under a notice to treat dated January 29, 1947.

The total compensation amounted to £190, being the after-damage value as certified by the War Damage Commission (see s. 61 and Sched. 8 of the Town and Country Planning Act, 1944). The total compensation fell to be apportioned between the freeholder and the lessee in proportion to the values of their interests, determined in accordance with para. 2 of Sched. 8 of the Act of 1944. This appeal was by the freeholder against an assessment by a Valuation Officer of the Board of Inland Revenue of the values of the interests of the two owners at £50 and £105 respectively.

The lessee had received the full amount of the value payment, *viz.*, £610 plus 60 per cent. owner-occupier supplement.

The Tribunal (J. P. C. DONE, ESQ., F.R.I.C.S.) assumed, having regard to the acquiescence of the freeholder in the receipt by the lessee of the whole of the value payment and the other circumstances of the case, that the lessee had not disclaimed the lease and was under obligations to rebuild, although not at a cost greater than necessary to preserve the value of the reversionary interest, and to pay the ground rent. The value of the interest of the freeholder was the actual ground rent for the remainder of the term, with a reversionary interest in premises equal in value to those destroyed. The value of the interest of the lessee was the capital value of the difference between the ground rent of £2 per annum actually paid and the full ground rent value of the property as rebuilt as shown by comparable properties, for which a reasonable figure was £10 per annum. Since there was an enforceable covenant to rebuild, the ground rent could be valued as secured.

On the assumption that rebuilding could be completed by June, 1952, the values of the respective interests of freeholder and lessee were assessed at £164 and £66, and the certified after-damage value should be apportioned in that proportion. Costs of the appellant (freeholder) to be paid by the acquiring authority.

Regent's Park Development Co., Ltd. v. St. Marylebone Corporation (Ref. 25/1950, March 1, 1951). This was a claim for compensation for the compulsory acquisition of 71 properties, comprised in an area of 60,000 feet super, 29 of the properties being the subject of statutory tenancies, and the remainder being vacant or in the possession of the claimants, or having been demolished. Twenty-one of the properties were shops with residential accommodation over and the remainder private residences, two of which were unoccupied on January 7, 1937. Notice to treat was dated March 22, 1949.

The claimants submitted a valuation of £44,640, adduced by the residual method from the total cost of a scheme of re-development under which the site would be cleared, the statutory tenancies terminated, and, in all, 53 houses (some with shop accommodation on the ground floor, some with garages) and 2 garages would be erected, within the limitations allowed by s. 12 and the Third Schedule of the Act of 1947.

The acquiring authority submitted a valuation based on the rent restricted properties at their investment value and the remaining vacant sites at a price per foot super.

The Tribunal (Sir WM. FITZGERALD, K.C., and J. P. C. DONE, F.R.I.C.S.) considered that the market value of the property would not be based on a scheme within the limits of re-development permitted by the Act, but would be what a purchaser would pay, having in mind a scheme free from the statutory limits but knowing that there would also be development charges to pay. Although in normal circumstances they would be reluctant to reject a valuation, based on experience and intuition, put forward by a witness as experienced as the valuer for the authority, they felt that so much speculation was involved in a valuation of this nature that the residual method was the only possible approach notwithstanding its assumptions and uncertainties. Having regard to *Bwllfa & Merthyr Dare Steam Collieries* (1891) *Ltd.* v. *Pontypridd Waterworks Co.*, [1903] A. C. 426, there should be taken into account subsequent development and duration of factors recognisable at the date of notice to treat.

The Tribunal accepted that by the time building could proceed the statutory tenancies would have been terminated, but considered that compensation to tenants of £100 per house must be allowed for. Deductions from the selling price must also be made in respect of houses with shop fronts or an unattractive prospect. The scarcity market justified the selling prices assigned to the houses by the claimants. An average deferment of one year for completion of the scheme was accepted, also a figure of 12½ per cent. for profit on gross turnover. Commission on sales should be deducted. Deferment of six years was considered appropriate since there was no early prospect of obtaining building licences for all the houses, and during that time the net income would be very small (£500). The possibility that limitation on selling price would still be in operation in six years' time and the speculative nature of certain of the assumptions should be discounted by adopting 8 per cent. as the return due upon the capital employed in an immediate purchase of the site.

Having regard to all these factors, the Tribunal assessed the compensation at £24,500.

Bimson v. Lancashire County Council (Ref. 101/1950, February 28, 1951). This was an application for the Tribunal to determine the compensation payable in respect of the compulsory acquisition of a vacant and unused plot of land, 566 square yards in area, at Clock Face, Bold, Lancashire. Notice to treat was served on July 19, 1950. The owner of the land, Mr. Bimson, had not delivered a notice of claim and did not appear before the Tribunal.

The Tribunal (CECIL H. BAILEY, ESQ., B.SC., M.I.C.E., F.R.I.C.S.) was satisfied on the evidence that Mr. Bimson was the owner and had been kept fully informed.

The land might at one time have been used, together with adjoining land of which it was part, as a garden or chicken run, and the District Valuer valued it for such a purpose at £120 per acre or 6d. per square yard. The District Valuer had placed a rental value of £1 1s. per year upon the whole of the land, of which this plot formed one-third. Therefore the rental value of the plot for this purpose was 7s. per year, which was about 0.15d. per yard per year.

Allotment rents at 1s. per rod gave a much higher figure of 0.40d. per yard, which at 20 years purchase was 8d. and at 22½ years purchase, 9d. The mean of these figures resulted in a value of £20 for the land, and the Tribunal accordingly determined that this was the compensation payable.

Pomroy v. Croydon Corporation (Ref. No. 6129, March 9, 1951). This was a claim for compensation for the compulsory purchase of three cottages and a yard (4,290 square feet in area). Notice to treat was dated December 11, 1947, and compensation fell to be determined under s. 55 of the Act of 1947.

The parties agreed that the compensation for the cottages should be £130 each, totalling £390. The claimant abandoned a claim he had made for supplemental compensation under the Act of 1944, but claimed £700 in respect of the yard, which was used for rag-sorting and car-breaking, and for disturbance. The District Valuer valued the yard at £320, based on 1s. 8d. per foot super (£357), reduced having regard to the notional lease provisions of s. 52 of the Act.

The Tribunal (J. P. C. DONE, ESQ., F.R.I.C.S.) rejected the claimant's valuation, but having regard to the suitability of the land for the particular uses, and the demand for those uses, the capital value was assessed on a rental value of £27 p.a., on a 6 per cent. basis, *viz.*, at £450. In view of the notional lease this was reduced to £427.

No evidence of disturbance having been given, the compensation was assessed at £390 + £427, namely £817.

Agricultural Interests and Planning

Refusal of Planning Permission on Advice of Minister of Agriculture

Where an application is made for planning permission for development which affects agricultural land or interests the usual practice is for the local planning authority to consult the local representative of the Ministry of Agriculture, quite apart from the consultation required by art. 9 (2) of the General Development Order, 1950, in respect of development of land for the purposes of agriculture. Where there has been a refusal of consent on the advice of the Ministry of Agriculture in respect of a development which would otherwise have been permitted, difficulties have arisen on an appeal against the refusal of planning permission because no representative of the Ministry of Agriculture would attend the planning inquiry, it being contrary to government policy that an official of one government department should attend and give evidence at an inquiry held by another department. Where this has occurred the local authority have been placed in the position of being unable to amplify or explain the reason for refusal of planning permission, and the appellant has been at the serious disadvantage of being unable to test the reasons by means of cross-examination.[1]

This matter was taken up some time ago by the County Councils' Association and was considered by the Ministry of Agriculture and the Ministry of Town and Country Planning, and new arrangements have been made with a view to obviating these difficulties.

Where the Ministry of Agriculture Land Commissioner considers that the proposed development would be definitely harmful to agricultural interests, *e.g.*, by splitting up a farm or taking valuable land out of effective cultivation, he will give a sufficient appreciation of the agricultural considerations to make clear the reasons on which his recommendation is based, and enable the authority to judge the strength of the agricultural objection. The Land Commissioner will also be willing to supply any additional information in his power which the authority feel will help them to reach a decision and to explain to the unsuccessful applicant both at the time of refusal and at any inquiry which may follow, the reasons why the proposed development should not be permitted.

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[1] See [1949] J. P. L. 698 for a case where the local planning authority invited the Minister to allow an appeal against the authority's own decision.

Also, where the Ministry of Agriculture oppose a particular application on agricultural grounds and there is no other substantial planning objection to the proposal, the Land Commissioner will, at the request of the authority, agree to meet members and/or officers of the authority and the appellant and explain the agricultural objections. Such cases are not likely to occur very often. But if, when they do occur, the appellant does attend a meeting of this kind, it will often prevent the necessity for an appeal, and even where no agreement is reached and the appellant decides to proceed with his appeal, he will do so with full knowledge of the agricultural objections to his proposed development.

If, notwithstanding the adoption of this procedure, the appellant proceeds to appeal and at the local inquiry into the appeal challenges the advice given to the authority by the Ministry of Agriculture, the Inspector who is conducting the inquiry will make it clear to the appellant that the authority acted quite properly in seeking expert advice, that after considering the application in all its aspects they decided to refuse consent on account of this advice, that the inquiry affords the appellant an opportunity of stating his reasons for disagreeing with the agricultural views put forward, and that the Minister before deciding the appeal would give full weight to the appellant's representations and, if necessary, consult further with the Ministry of Agriculture.

In a case where the Ministry of Agriculture do not consider that the proposed development will materially affect agricultural interests one way or the other, the Land Commissioner will inform the authority that the development will have no material effect on agricultural interests and that he proposes to make no recommendation one way or the other. It will then rest with the authority to decide the application on its individual merits in relation to the provisions intended to be inserted in the development plan and any other relevant considerations. If, after full examination, the authority can find no over-riding planning objection to the erection of a dwelling-house on the particular site proposed, they should not hesitate to approve the application. In a case of special difficulty, the Land Commissioner will be prepared at the request of the authority to give his views in regard to the suitability or otherwise of the land for agricultural use of the particular kind proposed. The question whether or not the land is capable of providing the developer with an adequate livelihood should not be regarded as constituting a prime ground for granting or withholding consent to the development.

The foregoing information has been conveyed to the County Councils' Association by a letter of the Ministry of Town and Country Planning.

Progress of Development Plans

(*Continued from p.* 149, *ante.*)

The following is the list to date (March 16, 1951) :—

4. Chester County Borough Council.
   (See *ante*, p. 97.)
   Local inquiry : April 3, 1951.
   (10.30 a.m., Town Hall, Chester.)

5. Darlington County Borough Council.
   (See *ante*, p. 97.)
   Local inquiry: May, 8, 1950.
   (10.30 a.m., Mechanic's Institute, Skinnergate, Darlington.)

6. Cheshire County Council (Hoole Urban District and parts of Chester Rural District).
   (See *ante*, p. 149.)
   Local inquiry : April 3, 1951.
   (10.30 a.m., Town Hall, Chester.)

Planning Decisions

Summary of Bulletin of Selected Appeal Decisions.
Bulletin No. 9

The following is a summary of Bulletin of Selected Appeal Decisions, No. 9, November, 1950, issued by the Ministry of Town and Country Planning.[1]

Reservation of Land for Re-location of Non-conforming Local Industry

The Minister upheld the decision of a local planning authority, refusing permission for the establishment of new industrial development (offices and plant repair store, and storage of machinery and stock by public works contractors) in an open area zoned for industrial development. The authority wished to reserve the land for re-locating local non-conforming users in accordance with their development plan proposals, and the Minister considered a reasonable amount of land should be reserved for such a purpose (IX/1: previously reported at [1950] J. P. L. 598).

Reservation of Land for Re-location of Non-conforming Local Industry

The Minister upheld the decision of a local planning authority, refusing permission for the erection of a factory in an area which the authority wished to reserve for the purpose of re-location of local non-conforming industrial users (IX/2).

Continued Use of Land and Erection of Buildings for Industrial Purposes in Area proposed for Residential Development

A local planning authority had imposed certain conditions including a five-year time limit expiring on June 30, 1954, in granting permission for the continued use for industrial purposes (manufacture of concrete blocks, etc.) of a strip of land with a building thereon in an area intended to be used eventually for housing.

As the business was an expanding one and other suitable sites were available the Minister decided to allow the use of the site for manufacture of concrete products until May 31, 1951, only, and to refuse permission for any further buildings on the land (IX/3).

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[1] Published by H.M. Stationery Office, price 6d. net. For summaries of earlier Bulletins, see [1948] J. P. L. 79, 501, 504; [1949] J. P. L. 45, 415, 691; [1950] J. P. L. 507, 837.

Conversion of Cottage to Use as Business Office of Industrial Firm

A local planning authority had refused permission for a firm of coachbuilders and painters to convert a cottage situated next to their works into an office. The cottage comprised two rooms without any modern amenities. The works were in the main street of a town in what would probably be zoned as a business or industrial area. The present office was only a small room partitioned off from the paint shop, and the Minister considered that the improvement in office accommodation which would result would be more valuable than the advantage of retaining the rooms for residential purposes, and allowed the appeal (IX/4).

Erection of Bungalow Made Conditional on Removal of Existing Dwelling

The Minister discharged a condition, imposed by the local authority in granting permission to the owner of a fruit farm for the erection of a bungalow thereon, that the use for dwelling purposes of a hut situated some distance from the farm in which the owner had been living and which had been occupied as a dwelling for the past thirty years, should be discontinued. The use of the hut was not related to the development authorised by the permission, and the condition was therefore not a proper one (IX/5: cp. case reported at [1950] J. P. L. 896).

Erection of Short-Wave Radio Mast at Rear of Dwelling-house

A local planning authority had refused permission for the erection of a lattice radio mast, thirty-nine feet high with a base six feet square and surmounted by a horizontal six feet beam aerial, in the garden of a small semi-detached house in a prominent position in a residential suburb of a city in the Midlands. The Minister upheld this decision, having regard to the size and position of the mast and the effect on neighbouring amenities which, in this particular case, would result from its situation (IX/6: previously reported at [1950] J. P. L. 434).

Use of Part of Dwelling-house for Light Industrial Use

The ground floor of a dwelling-house in a mainly residential road had been used for the manufacture of clothing from February, 1933, to July, 1948, and since that date for the manufacture of handbags and other articles. Although the area had, in February, 1933, been subject to a resolution to prepare a planning scheme, the Town and Country Planning Act, 1932, did not come into operation until April 1, 1933, and the Minister was advised that the use of this part of the house for the manufacture of clothing could not be deemed to have been begun in contravention of planning control. Both this use and the manufacture of handbags were within Use Class III, and planning permission for the latter use was accordingly not required.

Two rooms on the first floor of the house had also been used for manufacture of handbags since 1943. The Minister considered that the use of the premises for industrial purposes was inappropriate, and in regard to these rooms he confirmed the decision of the local planning authority and dismissed the appeal (IX/7).

Sale of Refreshments from Trailer Canteen on Site of Café

A trailer canteen, from which light refreshments were sold, had been established on a site where before war damage there had been a shop selling snacks. The Minister held that there was no material change of use, the appellant was entitled under s. 12 (5) (*c*) to use land which was unoccupied on the appointed day for the purpose for which it was last used, and the act of placing a trailer canteen on land did not constitute a building operation (IX/8).

Alterations to Shop Window

The Minister held that the alteration of a shop front by removing some show-cases in the "return" window in the entrance to the shop and constructing a hatchway for the sale of ice cream would not materially affect the external appearance of the building and accordingly was within s. 12 (2) (*a*) of the Act (IX/9).

Conversion of Shop into Two Shops

The Minister held that conversion of a shop into two shops was not development, having regard to s. 12 (3) of the Act which makes special provision in relation to dwelling-houses and to the fact that the proposed use of the two parts was in the same use class as the existing use of the whole building. Planning permission would, however, be necessary in respect of any works which would materially affect the external appearance of the building (IX/10).

Change of Use within Use Class III : *Light Industrial Uses*

The Minister held that the use of a building for manufacturing fire extinguishers, which had been carried on since 1946 under a conditional planning permission, was a light industrial use within Use Class III; and that use for the manufacture of plastics would also be a light industrial use within this use class if improvements to minimise noise were carried out. Accordingly, a proposal to use the building for this purpose would not involve development (IX/11).

Change of Use within Use Class: Previous Use Unauthorised

A local planning authority had imposed a time limit expiring on November 30, 1952, in respect of the use of a hall for storage and warehouse purposes in connection with the manufacture of clothing, and had imposed a further condition forbidding use of the premises for light sewing-machine work.

The premises had formerly been used as a furniture warehouse, and the Minister held that as both that use and the proposed storage-warehouse use were within Use Class X, no development was involved notwithstanding that the former use had been begun in contravention of previous planning control. There would be liability to enforcement action under s. 75, however, and dealing with the appeal as an appeal against the time limit, the Minister granted permission both for the storage-warehouse use and for the light sewing-machine work, subject to both uses being discontinued after ten years and to not more than thirty light sewing-machines being installed (IX/12).

Determinations under Section 17.

Reversion from Non-residential Club to Offices and Shop

Premises had been used without planning permission as a non-residential club from December, 1944, to January, 1950. The Minister held that this was not a temporary use within s. 12 (5) (*a*) of the Act of 1947, and the previous use of the premises could not, under that paragraph, be resumed without planning permission. But in view of the fact that the club use could have been subject to enforcement action under s. 75, and that had such action been taken the owners would have been entitled to resume the previous use, the Minister considered it would be unreasonable to assert that they could not do so without planning permission because enforcement action had in fact not been taken. He therefore determined that no permission was required for resumption of the previous use of part of the premises as offices and part as a shop (IX/13).

Reversion from Storage Use to Shop

Premises had been used as a retail shop and showrooms until 1928, had been vacant from 1928 to 1941, and used as a store and warehouse from 1941 to 1949. The Minister did not accept the appellants' contention that the storage use was a temporary one because no structural alterations had been made in converting the premises to this use. Accordingly s. 12 (5) (*a*) did not apply, and reversion to use as retail shop and showrooms would require planning permission (IX/14).

Conversion of Two Flats into Single Dwelling-house

The Minister held that a proposed change of use from two flats to one dwelling-house within the confines of a single building, and the carrying out of alterations affecting only the interior of the building, did not constitute development; but that alteration of the position of the chimney-stack and removal of an outside staircase were works materially affecting the external appearance of the building and hence development (IX/15 : previously reported at [1950] J. P. L. 436).

Occasional Use of Greyhound Track by Motor Cycle Club

The Minister upheld a decision by the local planning authority that occasional use of a greyhound racing track by a local motor-cycle club, even though on a non-profit basis, and for a maximum of six days in a year, would constitute a material change of use of the land. Such a use would, however, be a permitted use under Class IV of the General Development Order (temporary use for not more than 28 days in any calendar year) (IX/16 : See also IV/8, noted at [1949] J. P. L. 46, and VII/23, at [1950] J. P. L. 514.

Extension of Timber Stack and Erection of Sawmill[1]

A firm of timber merchants owned land part of which was used for stacking timber, and the remainder of which had been appropriated by them several years ago also for stacking timber but for later development by the erection of new mill buildings.

The Minister upheld the determination of the local planning authority that use of any part of the site which had not been used, or prepared for use, for industrial purposes before the appointed day, would constitute a material change of use, and that erection of the proposed new mill would be a building operation (IX/17).

Parking of Unoccupied Caravan in Curtilage of Dwelling-house

The Minister held that the parking of a caravan in the drive of a dwelling-house during intervals of holiday travel or camping, and not for residential use or purposes of hire or sale or display for hire or sale, was not materially different to parking a private motor-car there, and did not constitute development (IX/18).

Use of a Dwelling-house for Casual Accommodation of Company's Staff

A dwelling-house in a town in the north of England had been acquired by a London newspaper company, who intended to use it to accommodate senior members of their staff, free of charge, when in that district, part being occupied by a resident caretaker and his wife. The Minister held that this would be use as a hostel or residential club notwithstanding its restricted character, and hence would constitute development (IX/19).

Creation of Stock-piles in connection with Sand and Gravel Workings

Planning permission for the winning and grading of sand and gravel had been granted to a sand and gravel company, and the local planning authority had also held that no planning permission was required for the construction of a conveyor gantry. The company now proposed to create stock-piles of ballast on the land as part of an operation arising from the construction of the gantry.

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[1] The question of development charge in relation to somewhat similar development gave rise to some differences of opinion in Barsetshire last October, see [1950] J. P. L. 764.

The Minister held that as stock-piles were not permanent, and fluctuated in size from time to time, creation of them was not an " engineering operation " and was a use of land rather than the carrying out of operations on land. In this case he was satisfied that the proposed stock-piling was incidental to the winning and grading of the sand and gravel, and accordingly the formation or extension of the piles did not involve a material change of use of the land. It would be otherwise if the stock-piling was not reasonably incidental to the industrial process (IX/20).

Notes of Planning Decisions*

Parking of Lorry in Curtilage of Dwelling-house

The following is an extract from a letter of the Minister of Local Government and Planning, dated February 22, 1951, allowing an appeal against the refusal of Bebington Borough Council to permit the continued use of the curtilage of a dwelling-house at Bromborough, for parking a lorry.

" The Minister notes that the appellant at first kept his lorry in a lean-to shed in the garden of this house where he lives with his parents. It had, however, been parked in the open following the council's decision that the shed could be retained only on condition that it was not used for garaging a commercial vehicle. The planning authority had then served notice on the appellant requiring the discontinuance of ' the use of the curtilage of the dwelling-house for commercial purposes, *viz.* : as a parking place for a commercial vehicle ' and ' the restoration of the land to the use of a private garden '. The appellant then applied to continue parking his lorry at his home.

It was contended on behalf of the appellant that the parking of the lorry did not involve development and was in any case quite harmless. The appellant operated the lorry himself under contract with a gravel company at Willoughbridge, some 40 miles away. Each working morning the empty lorry was driven there for the day's haulage work and in the evening, after delivery of the last load, it was brought home empty and parked for the night. The haulage business was not operated from this house, but since the lorry was used for daily travelling it was convenient to keep it there.

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* The Managing Editor desires to express his thanks to those who have been kind enough to send to this Journal particulars of planning decisions, and hopes that he will continue to receive particulars of planning decisions which involve points of general interest.

As the council have taken enforcement proceedings, the question whether development is involved is not one which the Minister can decide. He can therefore consider the appeal only on its merits.

The Minister considers that the parking of the lorry cannot make any appreciable difference to the amenities of the district provided that it is not used for the carriage of goods to and from the premises. He has accordingly decided to allow the appeal and grant permission for the parking of the lorry on the land in question.

While the Minister has decided the appeal solely on its merits, he thinks it may be helpful to point out that when deciding appeals regarding the accommodation of a commercial vehicle on land or in a garage attached to a dwelling-house, he has, where there is no other purpose involved than the accommodation of the vehicle, consistently held that such accommodation does not constitute development under the 1947 Act."

[By courtesy of the Clerk of the Bebington Borough Council.]

Erection of Agricultural Dwelling-house and Buildings in Open Country on Perimeter of Built-up Area

The following is an extract from a letter of the Ministry of Town and Country Planning dated July 24, 1950, allowing an appeal against the refusal by the Isle of Ely County Council to grant permission for the erection of a dwelling-house with garage, incubation room and meal store on land at Wisbech.

"Permission was refused by your Council on the ground that the land in question is on the perimeter of the built-up area of a growing town which must in a reasonably foreseeable period be available for general development.

The Minister has given careful consideration to the facts of the case and the representations made to him. It appears to him that while the area in question might well be suitable for development in the future by housing, it is at present relatively open and with the exception of the adjoining Isolation Hospital, rural in character. The land owned by the appellant is conveniently situated for his farm duties and in the Minister's opinion the construction of the proposed house on the site chosen would not prejudice the future development of the neighbourhood if and when that development ensues.

In view, therefore, of the apparent need for additional accommodation for agricultural purposes, the Minister has decided to allow the appeal and to permit the erection of a dwelling-house and the ancillary buildings on the appeal site in accordance with the plans submitted with the appeal."

[By courtesy of the Clerk of the Isle of Ely County Council.]

This decision may be compared with Decision No. 6 in the Ministry's Bulletin of Selected Appeal Decisions, No. V, [1949] J. P. L. 417.

Establishment of Chapel of Rest in Residential Area

The following is an extract from a letter of the Minister of Local Government and Planning dated February 8, 1951, dismissing an appeal against the refusal of a County Council to grant planning permission for the erection of a private Rest Chapel on land situate at the rear of a private dwelling-house.

"[This house] stands at the end of a terrace of small two-storey dwelling-houses fronting a district road, the houses have small gardens at the rear which back on to similar gardens and terraces of dwellings. An opening 7 ft. wide separates the house from an adjoining dwelling-house and provides access from the street to a yard in which stands a garage, a shed and a workshop used for the manufacture of coffins. The appellant proposed to erect a Rest Chapel for use in connection with his own and two other undertaker businesses on land in the north-east corner of his yard flanking the curtilage of the adjoining dwelling-house.

In the Minister's view the contention of the Council that the establishment of a Chapel of Rest on the site in question would be open to serious objection is correct, and he is satisfied that the erection of the proposed building in this confined space in close proximity to residential buildings is most undesirable."

Correspondence

To the Managing Editor,
Journal of Planning Law.

Sir,

Planning Appeals

During the past two years I have given evidence at a considerable number of Planning Appeals. My experience is only based on appeals in connection with caravan sites, I admit, but I have often been at a loss to understand why the caravan site which is the subject of the appeal is not inspected by the Inspector from the Ministry before the hearing, instead of at the close of the proceedings.

In only one case in my experience has the site been inspected prior to the hearing, and in this case, as a result of the inspection, a considerable amount of time was saved in giving evidence during the proceedings. Instead of launching into map references and long explanations and descriptions of the area, counsel on either side were able to refer immediately to a particular object, knowing that the Inspector would have in his mind a picture of the site and its surroundings.

I should be interested to hear your experts' views on this matter.

Yours faithfully,

H. J. Speed-Andrews,
Secretary, National Caravan Council.

London, W.1.

To the Managing Editor,
Journal of Planning Law.

Sir,

"Maintenance" and Restoration. Warning Signs

I am curious as to the authority for the suggestion in the debate on the new Town Planning Bill that "maintenance" includes complete restoration if part of the old building remains. It might be worth while trying on the tax inspector a maintenance claim under Schedule A for a building almost entirely rebuilt!

I should also like to ask, as regards Practical Point 286, what purpose is served by a sign reading "D" or "A", etc. If they are separate signs they are not warning signs. If they are one sign, the limits of size are exceeded. I would suggest each sign should be completed with the word danger—

Danger, dAnger, daNger, danGer, dangEr, dangeR.

They can't touch you for that!

Yours faithfully,

Eastbourne. W. A. Leach, F.R.I.C.S.

Book Reviews

Town and Country Planning Textbook. Edited by A.P.R.R. (Association for Planning and Regional Reconstruction). (The Architectural Press. 1950. £2 2s.)

The purpose of this book is to provide students with a comprehensive course of study in the theory and practice of town and country planning. To this end some thirty authors have contributed, and the section headings—Geography, Planning Survey, Social Survey, Transport, Industry and Power, Law and Economics, and Conclusion: the realisation of a development plan—indicate the wide range of the subject-matter. In addition there is an Introduction by Professor W. G. Holford, and a number of appendices. Also, emphasing that although the book is comprehensive in scope it is only an introduction to knowledge, there is a long and detailed bibliography with an elaborate system of notation of the nature of the contents of the books listed.

Although primarily designed for students of town planning, for whom it provides a foundation of knowledge of the main aspects of the various heads of study, the book will provide much interesting reading for anyone engaged in any of the professions concerned with town planning, who wishes to obtain a general knowledge of the whole subject. Planning law does not receive detailed treatment, and of thirty-nine chapters only two are concerned with this side of the subject. One of these is a short historical account of planning legislation; the other comprises a brief account of the general nature of real property law and short resumés of the Town and Country Planning Act, 1947, and New Towns Act, 1946. As an attempt to gather into one book a comprehensive account of all the different aspects of town planning, however, this book is a very praiseworthy effort and meets with a considerable measure of success.

On the whole, the chapters are well written, and in view of the large number of authors who have contributed, it is remarkable that differences of style and approach do not obtrude too noticeably. The book is attractively set out and printed, and illustrated by many diagrams and photographs.

H. J. B.

Man, Society and Environment. By Brian Hackett. The Science of Planning Series, Vol. 2. (Percival Marshall. 1950. £1 10.)

This is an account of the development of the pattern of community life from its earliest beginnings to the present day. Covering the whole growth of civilisation in 272 pages of text, the author has packed a vast amount of material into a book of moderate size. Although this may be appreciated by anyone who wishes to obtain, in a relatively short time, a background knowledge of the origins of social planning, the references to events and people are generally too brief to be really informative. Students should, however, find the book a useful account of the historical growth of civilisation from the town planning point of view.

The modern planning legislation in this country occasions only two brief references. One of these—" In Britain, adequate powers have now been given under the Town and Country Planning Act, 1947, and the obstacle of finance no longer becomes a hindrance to positive planning at the local level "—will probably cause at least a questioning eyebrow to be raised by those who have been preparing development plans.

H. J. B.

Notes on the Accounting Implications of the Town and Country Planning Act, 1947*

[In response to requests from members of the Institute these notes are issued by the Council of the Institute of Chartered Accountants in England and Wales as a broad statement of the main changes brought about by the Town and Country Planning Act, 1947, and as a tentative indication of the accounting implications of those changes. Experience of the effects of the Act is still limited and must remain so until the practical consequences of some of its major provisions are clarified. It is, however, hoped that the suggestions made in these notes will be of assistance to members of the Institute who may have to consider the accounting implications in practice; it is emphasised that the notes do not deal with the treatment for taxation purposes of the losses and charges arising out of the Act.]

GENERAL EFFECT OF THE ACT

[Paragraphs (1)–(22) summarise the provisions of the Town and Country Planning Act, 1947, and the orders made thereunder so far as material for the purposes of these notes.]

SUGGESTIONS AS TO ACCOUNTING IMPLICATIONS

(23) Accounting implications arise from the following features of the Act:

(*a*) Loss of development value.
(*b*) Distribution from the central fund.
(*c*) Interest on the distribution.
(*d*) Development charge.

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* These Notes were published in January, 1950, by the Council of the Institute of Chartered Accountants in England and Wales, and are reproduced in this Journal by kind permission of the Council of the Institute.

Land held as a fixed asset

(24) Cases where land will be dealt with as a fixed asset include agricultural land held as such, landed estate owners, property companies and businesses owning and occupying premises for the purpose of carrying on their activities.

Recommendation IX on depreciation of fixed assets

(25) In No. IX of the series of recommendations on accounting principles the Council stated that :

> " Fixed assets, whatever be their nature or the type of business in which they are employed, have the fundamental characteristic that they are held with the object of earning revenue and not for the purpose of sale in the ordinary course of business. The amount at which they are shown in the balance sheet does not purport to be their realisable value or their replacement value, but is normally an historical record of their cost less amounts provided in respect of depreciation, amortisation, or depletion."

(26) Recommendation IX dealt with the methods of providing for depreciation of fixed assets and in regard to freehold land the Council stated that depreciation does not arise through use in the business (except in the case of land acquired for use as a mine or similar wasting asset) and that amounts set aside to provide for diminution in value do not constitute a normal charge against revenue and should be shown separately in the profit and loss account. Land in the sense used in the Council's recommendation does not include buildings whereas for the purposes of the Act land does include buildings.

(27) Recommendation IX was issued in January, 1945, before the enactment of the Town and Country Planning Act, 1947, and it is now necessary to consider whether a balance sheet can show a " true and fair view " if it does not take account of the changes which have been brought about by the Act, in particular the expropriation by the State of all development values.

Loss of development value

(28) Where land has already undergone development and the intention is to continue the existing use, it will not call for any special treatment as a result of the Act, as no loss is suffered while the existing use continues. An example of such land would be land on which a factory has been built and the

intention is to continue the existing use of the factory. Further extensions and similar work or a change of use may attract a development charge which is considered in paragraph (34).

(29) The accounting implications of the loss of development value in other cases may conveniently be considered under three categories of land:—

(*a*) *Land already developed but where it is intended to change the existing use.* An example of land in this category would be land on which a block of flats has been erected but which it is now intended to convert into offices. Such land will not call for any special treatment in respect of the loss of development value. The development charge when incurred would be treated as part of the capital cost of the change.

(*b*) "*Dead-ripe land*". Such land attracts no development charge unless the development which takes place is other than the development for which the "dead-ripe" certificate was issued. "Dead-ripe land" does not therefore normally give rise to any loss of development value by reason of the Act. Where, however, for reasons not connected with the Act it is decided not to proceed with the intended development, the position becomes similar to that under (*c*) below.

(*c*) *Land capable of further development and not "dead-ripe"*. Such land may have been purchased at a considerably higher price than that ruling immediately before January 7, 1947 (prices then ruling govern the restricted and unrestricted values), and it is necessary to consider whether any accounting adjustment is required in respect of the loss of development value; this question is dealt with in the succeeding paragraph.

(30) Where there has been a loss of development value of land capable of further development (item (*c*) of the preceding paragraph) it is not considered desirable to attempt to divide the cost of such land between the existing use value and the development value so as to separate from the cost the amount which is regarded as having been paid for the development rights now lost. Until the amount receivable from the central fund is known and any claim for compensation which may lie against the local planning authority has been determined, it is impossible to calculate the amount of the loss. Apart from this uncertainty, the nature of the loss incurred makes it undesirable that any division should be made of the cost of

land held as a fixed asset; the impact of the loss will be felt in one of the following ways:

(a) *By development charge when development takes place, no such charge having been contemplated when the land was acquired.* In this case the land will normally appear in the balance sheet as a fixed asset at cost and this should not be affected by the fact that subsequent development will give rise to expenditure not contemplated when the land was acquired. No accounting entries will therefore arise in this case unless and until development takes place, when the development charge will be recorded in the manner indicated in paragraph (34). It may, however, be advisable to consider in any particular case whether the amount involved is so material as to make it desirable to make an appropriate note on the balance sheet indicating that certain land will be subject to a development charge which was not envisaged when the land was acquired.

(b) *By failure to carry out development of the kind for which the land was acquired, the land being retained for its existing use or for some other purpose for which it can conveniently be held.* The failure to carry out the intended development may be due to the refusal of planning permission or on financial grounds. In this case also the land will normally appear in the balance sheet as a fixed asset at cost and this should not be affected by the fact that the value may now be less because of the provisions of the Act. No accounting entries will therefore arise unless and until some development takes place, when the development charge will be recorded in the manner indicated in paragraph (34). It may, however, be advisable to consider in any particular case whether the amount involved is so material as to make it desirable to make an appropriate note on the balance sheet indicating that no provision has been made for the diminution in value resulting from the Act.

(c) *Where planning permission is refused or the development charge is considered to be too great to warrant proceeding with the development and the land cannot usefully be retained for any other purpose, so that the land must be sold to recoup as much as possible of the original outlay.* The loss which may be incurred cannot be estimated with any degree of certainty, because neither the amount for which the land will be realised nor the distribution, if any, from the central fund, is known. No accounting entries will therefore arise before realisation but in any particular case it may be advisable to consider whether the loss which may be incurred is so material as to make it desirable to make an appropriate note on the balance sheet.

(*d*) *By realisation of the land at less than its cost.* In this case the capital loss which has been incurred will be recorded in the books and will normally be charged in the accounts of companies against reserves or to the profit and loss account.

Distribution from the central fund

(31) At present it is impossible to compute what amount of government stock will in due course be received, because there are two uncertain factors: first, the amount for which the claim will be agreed, and second, the amount which will be received. Pending settlement of the amount receivable it is not normally desirable to bring any estimate thereof into the balance sheet. There are, however, circumstances in which an appropriate note would be made on the balance sheet; in particular:

(*a*) Where land has been sold but the right to claim on the central fund has been retained and the distribution is expected to be material.

(*b*) Where development charge has been assessed and is shown as a liability, but the land is eligible for "near-ripe" treatment so that the development charge will later be set-off against the full loss of development value. Although the full amount of the loss is expected to be normally equal to the development charge, this may not necessarily be the case.

(32) When the government stock is received it will be brought into the balance sheet as an asset and the corresponding credit dealt with as follows according to the circumstances:

(*a*) By credit to the asset account to which a development charge has been debited.

(*b*) By credit to the asset account where a decision not to proceed with development has been made.

(*c*) By credit to a specific reserve account pending set-off against a development charge yet to be incurred.

(*d*) By credit to the account which has been charged with any realised loss on sale of land for which the right to the claim has been retained.

Interest on the distribution

(33) When interest in received from the Central Land Board in respect of the period from July 1, 1948, to the date on which the government stock is issued, the profit and loss account should include as revenue the gross amount of the interest; and the income-tax deducted therefrom should be included as part of the taxation charge. The same principle should be followed when interest is received in respect of the period from July 1, 1948, to the date of payment of any compensation due under the Treasury scheme made pursuant to s. 59 of the Act.

Development charge

(34) A development charge which has already been paid in full will be charged directly to the asset account. Where a development charge has been assessed but has not yet been discharged or is payable by instalments, the full amount of the development charge should be charged to the asset account, the liability being shown on the balance sheet together with an indication of any security given to the Central Land Board in accordance with s.71 of the Act. In cases of " near-ripe land " a note will be required as suggested in paragraph (31).

Land held as a current asset for trading operations

(35) Land held by builders, estate developers and similar undertakings, will be treated as " stock-in-trade " and valued at the lower of cost or market value having regard to any loss arising by reason of the Act. Development charges incurred will be treated as costs of the land concerned.

Loans secured on land

(36) Where loans have been secured on land, a mortgagor will show the full amount of the loan in his balance sheet so that no action will be required. A mortgagee may find that his loan is now only partly secured and in that event the fact should be taken into account in determining the treatment of the item in his balance sheet. In this connection it is necessary to bear in mind that the scheme to be formulated by the Treasury for distribution of the central fund is not yet known but the Treasury is empowered to take into account the interests of mortgagees, rent chargees and other persons with priority interests in the land.

Practical Points

All questions for consideration should be addressed to " The Managing Editor, The Journal of Planning Law, 3 Chancery Lane, London, W.C.2." The questions of subscribers only are answerable in the Journal. All questions should be submitted in duplicate. The Publishers cannot accept any responsibility for the correctness of replies.

277. *Development—Use Classes Order—boot repair business* ([1951] *J. P. L.* 65).

SUPPLEMENTAL ANSWER

It has been pointed out that paragraph (2) of this answer is not correct. The definition of " industrial building " in the Use Classes Order specifically does not include a shop, and as stated in the answer to Practical Point No. 276, a boot repair business is within the definition of " shop " in the Order. [W. A. L.]

295. *Claim for loss of development value—calculation of restricted value.*

Is a District Valuer right in contending that Part VI " restricted value " must be calculated on the basis that planning permission would not be granted, that is it would be refused, for the classes of development for which planning permission is not required as set out in the General Development Order which was in force on July 1, 1948?

Ordinarily, " open market value " would include any benefit derivable from a G. D. O. in force at the time, and it is difficult to appreciate why a piece of land which would readily sell at say £250 with the right to fence and erect shelters for live stock should be valued at say £50 because planning permission will never be given for the erection of fences and live stock shelters, and therefore is suitable only for unfenced allotment gardens.

Further complications arise by reason of the replacement of the 1948 G. D. O. by the 1950 Order. Owners of areas in excess of an acre are given a wider range of concessions whilst owners of an acre or less are worse off than they were under the 1948 Order, consequently the present open market value of small pieces of land which are not completely fenced and have no shelters on them has decreased and of similar land in excess of an acre has increased. If the District Valuer's contention is right, it would seem that the meagre amount of compensation payable on compulsory acquisition would remain unaffected by any increase or decrease in the "open market value". [J. C.]

ANSWER

The lower the restricted value the higher the claim and I assume the enquiry is *pro bono publico.*

Where the questioner is wrong is in assuming that permission under the G. D. O. gives exemption from development charge. The G. D. O. does no more than give planning permission and has no effect whatever on the liability to charge. Exemption from charge may arise under the Development Charge Exemptions Regulations (on July 1, 1948, SI 1948, No. 1188), but these exemptions have to be disregarded in considering Part VI claims (s. 61 (2) (*a*)).

Therefore on July 1, 1948, the open market value of the land (other than for compulsory acquisition) would approximate to the greater of (a) its value for the existing use including developments within the Third Schedule of the Act or (b) its value for any purpose for which permission has been or would be granted less any development charge which might be attracted. The Exemptions Regulations (now SI 1950, No. 1233) would need to be considered here. The compulsory purchase value of the land would, strictly, be its value for the existing use including developments free of charge by the Third Schedule of the Act, but by concession exemptions under the Exemptions Regulations may be taken into consideration where the authority purchases by agreement—see [1951] J. P. L. 2. The restricted value of the land would be the value for the existing use including developments freed from charge by the Third Schedule to the Act. [W. A. L.]

296. *Claim for loss of development value—development charge.*

Many of our clients lodged claims for loss of development value because it was apparent that the Town and Country Planning Act would undoubtedly adversely affect them should they wish to develop their properties in a particular way, such as, a block of cottage property in an industrial area which might be pulled down so that a factory, etc., might be erected there. Further examples are in respect of small country cinemas, in respect of which plans for considerable extension were prepared, even before the last war; empty shop property adjacent to business premises purchased with a view to its incorporation into the business premises; and small factory property which could be extended in size, without detraction from the amenities of the neighbourhood. In each of these instances, although the District Valuer has agreed with us that any such extension would undoubtedly result in the assessment of a development charge, the Board refuse to admit a claim for loss of development value.

We quite agree that it would be difficult to assess, in pecuniary terms, the loss of the right to develop each of these properties, as the owner wishes, but we do not agree with the Valuer when he states no attempt will now be made to assess such loss. Is there any means of contesting his view? [C. & Co.]

ANSWER

If the Central Land Board are satisfied that the depreciation cannot be measured in terms of market value they may make a nil determination, but if they are satisfied that any assessable depreciation will result, even if *de minimis*, they must determine the restricted and unrestricted values, and there will be a right of appeal under s. 60 of the Act. [W. A. L.]

297. *Claim for loss of development value—effect of nil determination on development charge.*

A client of ours owns a private dwelling-house with offices, garages and pleasure grounds, in all approximately 74½ acres, and has made a claim for loss of development value. It is intended to use the premises for the purpose of zoological gardens, and interim development permission for the proposed use was granted on October 10, 1947.

Application for assessment of the development charge was made to the Central Land Board, who refused to consider the application until a licence was secured or the promise of one within twelve months.

The claim for depreciation has been considered by the District Valuer, and he proposes to determine that there is no development value in the interest in the land, and in view of the proposed development which is to take place by use as zoological gardens with the appropriate buildings thereto, our client is desirous of knowing whether it will be to his advantage to accept the determination. [B. H. & H.]

ANSWER

It does not follow that a nil determination under Part VI excludes the possibility of a development charge.

The Part VI claim is based on value at January 7, 1947, and the question is whether a purchaser on July 1, 1948, would have given more for the land with the possibility of development as a zoo (by reference to prices at the earlier date). A purchaser might consider the time lag before the change could be made and the outcome too speculative to be worth hard cash. Also he is concerned only with a particular interest. Further, it may be the zoo use would be a use for the purposes of one particular owner, and within r. 3 of the 1919 Act.

Development charge is arrived at when the development is about to be undertaken and many of the uncertainties are past, although the success of a venture may still be speculative. It is not tied to any particular interest but to the hypothetical fee simple with vacant possession whilst the rules of the 1919 Act do not apply.

Beyond this the problem is one of valuation in the circumstances of the particular case. [W. A. L.]

298. *Claim for loss of development value—shop window.*

Can you kindly tell us whether the making of a shop window in existing shop premises, but in a part of the outside elevation which has no shop window hitherto, is a development in respect of which a claim was properly made? [W. & W.]

ANSWER

The opening of the new shop window would probably be a material alteration to the external appearance (s. 12 (2) (*a*)) and as such would be development for which planning permission and determination of a development charge would be necessary. But see Bulletin decision IX/9 at p. 232, *ante*.

A claim under Part VI should be pursued. [W. A. L.]

299. *Development—additional room to dwelling-house.*

A client contemplates altering the under-roof space in his house so that it will provide an additional much-needed room.

He anticipates that any such alteration could be effected within the limit of cost above which an application for licence to do work on property must be made, and that there would be no necessity to apply for a licence to use or obtain controlled materials.

Does such an alteration amount to " development ", and, if so, is it exempted from development charge under the Development Charge Exemptions Regulations, 1950? [K. & F.]

Answer

If the works would not materially affect the external appearance of the building, planning permission would not be necessary (s. 12 (2) (*a*)). In the contrary event, planning permission is granted by Class I of the General Development Order, 1950, but permission would be necessary if the limits of cubic enlargement thereunder would be exceeded or the height of the building increased. No development charge would be payable for an enlargement within the tolerance of para. 3 of the Third Schedule or Exemption 1 (2) of the Development Charge Exemptions Regulations, 1950 (presuming the house was in existence on July 1, 1948), or Exemption 1 (4) of the Regulations only if erected after that day. [W. A. L.]

300. *General Development Order—enlargement etc. of dwelling-house.*

A client owns two cottages, the wall of one of which is falling down. The other cottage is virtually derelict. He proposes to pull down the derelict cottage and to rebuild the wall of the other cottage and put on a new roof.

Application has been made under s. 17 to the planning authority who state that the proposal of my client does not come within class 1 of the First Schedule of the Town and Country Planning General Development Order, 1950, and that therefore since the proposal involves a material alteration in the external appearance of the existing building planning permission will be required for the work.

It would be much appreciated if you could give some assistance in defining the words used in the General Development Order, *i.e.*, " the enlargement improvement or other alteration of a dwellinghouse ". The words certainly appear to be very wide, and certainly Dr. Dalton talked about an experiment in freedom when the Order was made. If the meaning of the words is to be cut down arbitrarily by a planning authority, the Order will be of little value. [A. F. B. T.]

ANSWER

An appeal to the Minister is advised as I see no reason why the proposed work should not come within the meaning of the words " improvement or other alteration of a dwelling-house ". [R. P. C.]

301. *Material change of use—recreation ground.*

A parish council wish to rent a meadow for use as a recreation ground for the parish. At the moment it is agricultural land. We would much appreciate your views as to whether planning permission is necessary, and whether development charge is payable. [C. & Co.]

ANSWER

In my opinion, this change of use would quite clearly be " material ", and therefore constitute development. The case is not covered by any special exemptions in the various regulations, and my answer to both questions is, therefore, in the affirmative. [J. F. G.]

302. *Near-ripe land—statutory maximum selling price.*

You will be aware that local authorities, in arriving at the maximum selling price of newly-constructed houses, take into account the value of land, buildings, services, etc. I am of opinion that for two identical buildings erected on adjoining plots of land—one plot of which is " near-ripe ", the other not, different selling prices must be fixed for each to take into account the differing circumstances in regard to liability for development charge. Do you agree? [J. R. H.]

ANSWER

It does not seem to me that there should be any difference since the values as restricted plus development charges would, in the given circumstances, probably be the same. The only difference is that one charge is logged up and the other paid in cash, which is a matter of accountancy, not value. In any event, an authority should not be too diligent in finding grounds for artificial variations in the prices chargeable for similar objects, but that is only the view of an outsider looking in. See also [1949] J. P. L. 542. [W. A. L.]

THE JOURNAL of PLANNING LAW

Published by

SWEET & MAXWELL, LIMITED

2 & 3 CHANCERY LANE, W.C.2

On the First of Every Month

Subscription: £1 10s. 0d.

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"*Planning Law*" Notes

We draw the attention of those concerned with a claim either on the s. 58, £300 million, scheme or on the s. 59 scheme, to the requirement that if an enforcement notice is served under s. 75 of the Act in relation to the land, or if a notice to treat is served on the claimant, or a contract for sale entered into with an authority having power to acquire compulsorily, the claimant must give written notice thereof to the Central Land Board within thirty days. The obligation to do so is contained in reg. 8 of the Claims for Depreciation of Land Values Regulations, 1948 (SI 1948, No. 902; [1948] J. P. L. 142), and reg. 7 of the Planning Payments (War Damage) Regulations, 1949 (SI 1949, No. 2255; [1950] J. P. L. 52), and in the latter case the requirement is reinforced by a provision (reg. 9) that the right to receive a payment under the scheme is conditional upon due and punctual compliance with, *inter alia*, this provision of the regulations.

The newest local planning authority (see *Country Life*, March 30, 1951) is Schweppshire, capital Cirenschweppster. It is furnished with buildings of historic and architectural interest (Schwepstow Castle), and at least two portions of the county (the Schweppenines and Schwepping Forest) may be designated as National Parks. There is a good racecourse on Schwepsom Downs and a River Board will be required to look after the River Schweppe with its headquarters at Schwepperton.

A pleasant conceit truly and all the result of private enterprise.

The Court of Appeal, by a majority, have upheld the action of the Central Land Board in compulsorily acquiring a building plot at "existing use value" in order to resell it at existing use value plus development charge to a would-be developer. All the members of the Court were agreed that the exercise by the Board of their powers of compulsory purchase had to be for the purpose of assisting them in their function of collecting development charges and were agreed that this was one of the purposes which had prompted them to act. Somervell and Singleton, L.JJ., were satisfied that this justified the Board's action. Denning, L.J., was of the opinion that the dominant purpose of the Board was to enforce their policy of sales at existing use value only. This was a policy laid down by the Board and not by Parliament and the act of the Board in using their compulsory powers to enforce it was a usurpation of the functions of the Legislature. Leave to appeal to the House of Lords was granted. (For a summary of the decision, see *post*, p. 296.)

The Minister of Local Government and Planning has decided to confirm the Designation Order for the Peak District National Park substantially as it was made by the National Parks Commission. He has excluded two small areas of land in Macclesfield Rural District in the north-west corner of the park. Copies of the Order and map will be deposited in the offices of all the local authorities affected as soon as the necessary copies of the map have been made. The Commission will then publish notices in local and national papers, and in the London Gazette. The Minister has rejected the contention that the boundaries of the Park should be made to follow those of local authorities.

Pending the setting up of a joint planning board as the planning authority for the Park, applications for permission to develop should still be sent to the office of the appropriate local authority.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Journal. They should be sent to the Managing Editor, *Journal of Planning Law*, 3 Chancery Lane, London, W.C.2. *Every attempt will be made to return drafts or unsuitable copy but no guarantee can be given in this respect.*

Books for review should be sent to the publishers at the above address.

The Theory of Development Charge Reconsidered

By W. A. Leach, F.R.I.C.S.

Since there is no appeal against a determination of development charge made by the Central Land Board, their views will no doubt prevail, but where the basis of their determination is known, it may be open to appeal to the Courts on the ground of not having been calculated in accordance with the provisions of the Act. (*Sinclair-Lockhart's Trustees* v. *Central Land Board* (1950), 1 P. & C. R. 195, 320.) Doubts as to the validity of parts of Practice Notes (First Series) make it highly desirable that provision should be made for appeals from determinations of the Board, and pending such a provision the Board should, on request, state the view they have adopted on any question of principle involved.

A. Statutory Directions

Section 70.

The ascertainment of development values under Part VI of the Act is governed by ss. 61 and 62, comprising eleven sub-sections. Valuation for purposes of development charge is governed by one sub-section, s. 70 (2), which provides very simply that in determining whether any, and if so what development charge is to be paid in respect of any permitted development, the Board shall have regard to the amount by which the value of the land with the benefit of the planning permission exceeds the value of the land without that benefit. Regulations as to the amount of the development charge may be made by the Treasury under s. 70 (3).

S. 70 (2) and (3) provide in detail as follows :—

> (2) In determining whether any and if so what development charge is to be paid under this Part of this Act in respect of any operations or any use of land, the Board shall have regard to the amount by which the value of the land with the benefit of planning permission for those operations or that use (calculated without regard to any charge payable in respect thereof under this Part of this Act and on the assumption that the operation or use can lawfully be carried out or made apart from the provisions of this Act) exceeds the value which it would have without the benefit of such permission, and shall not give any undue or unreasonable preference or advantage to one applicant over another.

> (3) Subject to the provisions of the last foregoing subsection, regulations made under this Act with the consent of the Treasury may prescribe general principles to be followed by the Central Land Board in determining under this Part of this Act whether any and if so what development charge is to be paid thereunder in respect of any operations or use of land, and without prejudice to the generality of the foregoing provision, such regulations may in particular provide for securing that the amount of the said charge shall be determined on different principles in relation to operations or uses of different classes, or in relation to operations or uses carried out or begun at different periods.

It is clear that s. 70 (2) is so free of circumscribing rules that *pace* Practice Notes, para. 51, no methods and rules can be deduced from those applicable to valuations under Parts V and VI of the Act. The valuations give an assessment on which development charge is to be based: the amount of the charge is dependent on the regulations.

The interest to be valued.

The instruction in s. 70 (2) is to consider certain values of "the land". "Land" itself has no value: what has value is an interest in the land. By s. 119 (1) the term "land" only includes actual interests in relation to compulsory acquisition. Again, the permission is for the benefit of the land (see [1950] J. P. L. 873), the nature of the actual interest of an owner being of no importance to planning. There is no authority for valuing actual interests and the only practical answer is to regard "land" as being intended to imply the fee simple interest with vacant possession. Probably no regard should be had to contractual restrictions on the actual fee simple. That may be debateable; but if such regard should be had, there is nothing to exclude restrictions created after July 1, 1948.

The "land" to be valued.

By s. 69 (2), Part VII of the Act applies to all developments for which planning permission under Part III is required, and since the permission applies to a particular area of land, it would seem *prima facie* that the development charge should be in respect of the same land.

By s. 70 (1), the applicant for a determination must have a sufficient interest in the land to carry out the development, *i.e.*, he need only have an interest in the land comprised in the permission and no other land if thereby he could carry out the works.

S. 70 (2) refers to " the land with the benefit of planning permission " and " without the benefit of such permission ". This must mean the value of the land comprised in the permission for there is no other land mentioned. Development charge cannot depend on the chance of ownership of adjoining land, *for it is a hypothetical freehold which is involved* and there is no authority for expanding the ownership of the hypothetical freeholder to fit that of any actual owner; nor can it have been intended to charge any possible developer of the land comprised in the permission in respect of land in which he may have no interest. The planning permission indicates what the developer wishes to do, and if the planning authority is satisfied to approve it as a development of the curtilage shewn in the planning application, the Board cannot, it is submitted, arbitrarily prescribe a different curtilage.

The Board may, as stated in para. 64 of Practice Notes, assume that the real owner of the adjoining land might be a purchaser of the actual area to be built upon from its notional owner, but the owner of the adjoining land will probably be in as strong (perhaps stronger) position for driving a bargain than the notional owner of the land to be built upon. Of course, a house cannot be built without some degree of open space, and a planning permission cannot be valued if it does not show a plot of sufficient size to meet the bye-law (and, in due course when schemes have been made, planning) requirements applicable to the type of building. The applicant for the determination should in such a case be required to obtain an amended permission. There is an implicit relationship between Parts III and VII, a permission to develop land and a charge for developing that land.

The words " with the benefit of the permission " qualify " the value of the land " and not " the land ". The words " the value of the land without the benefit of the permission " (which the Board call " refusal value ") could, if standing alone, mean the value of all land without the benefit of the permission ! That meaning is impossible in the present context. By parallel construction the words " the value of the land with the benefit of the permission " (called by the Board " consent value ") cannot mean the value of all land benefited by the permission. But if the words qualify " the value of the land " what is the land which has to be valued ? There is nothing comparable with s. 5 (2) (c) (i) which permits the designation of contiguous land with an area of comprehensive development, and the only land under consideration is that comprised in the planning permission, *i.e.*, " consent value " applies to land in the consent.

There is, in this connection, a discrepancy between the decision in *Sinclair-Lockhart's Trustees* v. *Central Land Board* (1950), 1 P. & C. R. 195, 320, and the *obiter* of Lord Goddard, C.J., in *Sampson's Exors.* v. *Nottinghamshire C. C.* (1949), 1 P. & C. R. 1. In the former case (which seems to show that the Board lack faith in para. 64 of Practice Notes, *supra*) it was held, by a majority judgment in the First Division (Inner House) of the Court of Session, that where the planning permission was for a house without any curtilage the Board were entitled to include a suitable curtilage in the valuations under s. 70 (2). In the latter case it was said that to include agricultural land in the curtilage of a house was a change of use for which planning permission would be required.

The former would give rise to a number of difficulties. For example, can the applicant use as such the curtilage as selected by the Board without planning permission, or if permission is required and is granted in respect of a different area, is the development charge to be adjusted? Again, is the Board entitled to enquire what land is owned by the applicant in order to fix the curtilage in relation to land which can in fact be used as such? Or if planning permission is obtained for another use of the land or part of the land deemed by the Board to be the curtilage of the house, on what basis is the refusal value of that land to be calculated in view of the absence of any planning permission to use it with the house? Moreover, does this power to select a curtilage stop at houses, or can it include factories and other buildings, and could the curtilage of a factory be deemed to extend into land previously deemed to be in the curtilage of a house?

S. 70 (2) says nothing about curtilage and the *obiter* of Lord Goddard, C.J., is to be preferred.

Meaning of " Value ".

The meaning of the term " value " as applied in s. 70 (2) is not defined nor, as already noted, are any rules vouchsafed. A piece of property may have many values, even if restricted to freehold capital values, *e.g.*, value to owner, value to owner-occupier, market value, value to a special purchaser, compulsory purchase value, break-up value, etc. All these, however, are qualified values whereas the word " value " *simpliciter* must have a basic meaning which these qualifications can modify.

The answer is, perhaps, to be found in *Lord Advocate* v. *Holmes*, 28 Sc. L. R. 293. Lord M'Laren stated " that the word ' value ' when it occurs in a contract has a perfectly definite and known meaning unless there be something in the contract itself to suggest a meaning different from the ordinary meaning. It means exchangeable value—the price which the subject will bring when exposed to the test of competition ".

Although in the present connection there is no question of a contract (except in so far as market value indicates a contract about to be entered into), Lord M'Laren's definition seems to be a very apt one for the word when used without any qualification to give it a special shade of meaning and without context to imply a particular qualification. To the man in the street, the simple unqualified " value " of a thing is undoubtedly the price it will command if offered for sale in the open market.

There is nothing in s. 70 (2) or its context to supplant that meaning. The values to be ascertained are those of a hypothetical freehold interest with vacant possession. The applicant may or may not be an owner of such an interest in fact, but his actual interest, which may be limited or qualified in many ways, is not relevant. The State could be visualised as the notional owner of the hypothetical interest since they are in fact selling the right to develop and the valuations are designed to arrive at the value of that right.

Be that as it may, planning permission having been granted, the notional owner can have no option as to selling, or the Act would not work, and he must therefore be regarded as a willing seller. Since a determination under s. 70 (2) has been required, there must be a willing buyer. Since development is contemplated, the buyer must usually attach importance to physical possession, but not as a person under a necessity or duty to carry out the development either there or elsewhere. We have, therefore, the conception of a hypothetical freehold interest in the land comprised in the planning permission for sale with vacant possession in the open market, the seller and the purchaser both being willing in respect of the property as offered in the market. That is the basis on which the values of s. 70 (2) have to be determined.

Except as to the " land " to be valued, this is, so far, substantially the same as the position taken up by the Board in para. 36 of Practice Notes, but the matter has been worthy of the consideration given since there is in para. 37 (and elsewhere in Practice Notes) an air of benevolence which may not be justified by the Act. Benevolence is commendable but rights are always to be preferred.

With and without the benefit of the permission.

The words " with the benefit of planning permission " and " without the benefit of planning permission " are not adequately considered in Practice Notes. The benefit of a planning permission cannot be reaped until the development charge (if any) has been paid so that the value " with " is inclusive of any such charge. The words in brackets in s. 70 (2) dispose of any argument as to this.

The value " without the *benefit* of the permission " is not the " value without the permission " on the assumption that it would not be granted. The permission exists as a fact and it is only the benefit thereof which is to be excluded : the fact that a permission has actually been granted sustains the value for the existing use, for those who wish to develop know that they can secure the benefit of the permission by paying the development charge and will be prepared to bid. Therefore their desire for possession will influence both the values with and without the benefit of the permission. If the proper assumption were that permission would not be granted in any circumstances all those who would only purchase with the intention of development would have to be excluded from the market. The real difference between the values with and without the benefit of the permission is, in fact, the logical one that the " with value " is free of development charge and the " without value " subject to development charge for adopting the benefit. It follows that " refusal value " is a complete misnomer.

The business possibility that other permissions for necessary developments will be granted from time to time will also often sustain the value of land above its value as limited exclusively to its existing or permitted development. Expressed in broader terms, the value of the land with or without the benefit of the permission is not to be depreciated on the assumption that it is tied in perpetuity to one use (or class of use) and one size and type of building, but it is not to be appreciated in any degree by the value it will have for the permitted or any other development.

Value without the benefit of the permission (refusal value).

Without the benefit of the planning permission the land yet has certain advantages:—(a) the existing use; (b) the exceptions from " development " comprised in provisoes (*a*) to (*f*) of s. 12 (2); (c) possibly certain rights under s. 12 (5) or s. 18 (5) to resume a former use; (d) Third Schedule rights; (e) possibly certain rights under the Development Charge Exemptions Regulations (SI 1950, No. 1233) (bearing in mind that refusal of permission where these rights are concerned gives no right to compensation under s. 20, and that the value of the rights cannot be considered in a compulsory purchase valuation); (f) the right to adopt, on payment of the proper development charge, the benefit of the planning permission which has been granted; and (g) the possibility of permission being given from time to time for other developments as necessary or desirable. Consideration must be given to all these, so far as they would affect the market value, in calculating the value of the land without the benefit of the permission.

Advantages (f) and (g) have been considered under the previous heading.

Value with the benefit of the permission (*consent value*).

A purchaser of the land with the benefit of a planning permission may prefer not to utilise the permission but to continue to enjoy the existing use and ancillary rights: therefore, the value with the benefit of the permission cannot be less than the value without that benefit. It is only where the value with the benefit of the permission exceeds the value without that benefit that the benefit itself has a value (this may seem childishly simply but it is still widely imagined that any permission will attract a development charge) and it is, therefore, sufficient to value the consent value of the land as though it were intended to give effect to the permission.[1] Indeed, in the case of a permission for a change of use (not being a limited period permission) if effect is given to the permission, the property will in future be restricted permanently to that use, and to value as though there were an absolute right to two uses, the old and the new, would in some cases, give a false answer. Even in the case of a limited period permission the normal use can be resumed only at the expiry of the limited period and there is no concurrent right of two uses.[2] A purchaser would not entirely exclude from his mind the possibility of permission being given for another use if that in force ceased to be satisfactory.

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[1] See, for example, the case of the extension of the garden of a dwelling-house in Barsetshire, *post*, p. 285.

[2] Generally as to concurrent uses, see the article by Dr. H. Potter at [1950] J. P. L. 801, 879.

Exemptions from development charge must be ignored in estimating consent value and para. 58 of Practice Notes is thought to err in this respect. This is, of course, a matter of construction, but if an Act provides that something is to be exempt from development charge, it is surely a contravention of the Act to bring that thing into account as an item in the build-up of development charge. If it is brought into account then exemption is in fact denied; an owner may, indeed, be worse off as a result of the so-called " exemption " by being charged in advance for the possibility of the " exempted " development being carried out, instead of the charge awaiting a development which may never occur.

In considering the exemption one must, of course, look also at what is " not development ". Until recently exemptions from charge under the Use Classes Order (SI 1948, No. 955) (the Third Schedule Order) were " not development " under SI 1948, No. 954 (the s. 12 (2) (*f*) Order), and what is " not development " must always go into the " consent value ". Therefore, the Third Schedule Order would in the past have been ignored in this respect. Where, however, the new Order under s. 12 (2) (*f*) (SI 1950, No. 1131) differs from the 1948 Order so that an exemption under the latter is development under the former, the exemption should be ignored. The same applies to the Development Charge Exemptions Regulations (SI 1950, No. 1233) so that if, for example, permission is granted for use as a shop, any additional value due to the provisions of Exemption 3 (3) of the Exemptions Regulations, should be ignored. It is also to be remembered that what is permitted under the General Development Order (SI 1950, No. 728) is still development, and its exemption from charge under the Development Charge Exemptions Regulations should not be brought into the consent value.

Not only would any other course deny exemption but it would levy a charge where consent to develop may not be granted, where, in that event, no compensation would be claimable, where nothing would be allowed in the event of compulsory acquisition; and where so far as the Exemptions Regulations are concerned future amendment may lead to the imposition of a further development charge in the event of permission being sought and granted.

Although as noted above, what is " not development " must always be taken into account in estimating " consent value ", this can only be done to the extent to which the open market value of the land would be increased thereby. If, for example, a permission is granted for a cinema only, the Board cannot value as though it were for the whole of Class XVIII of the Use Classes Order (SI 1950, No. 1131), except in so far as the wider possible range of use would be regarded in the market as resulting in a more secure investment.

Conditions of the permission, etc.

In valuing the land with the benefit of the permission any conditions attached thereto and any requirements that may be made under the bye-laws or the London Building Acts, or s. 17 of the Restriction of Ribbon Development Act, 1935, must be taken into consideration.

The market.

As it is the market value which has to be considered, the nature of the market value must next be examined.

Of course, if the land were actually offered in the market by the hypothetical freeholder all possible bidders would have to be considered. It may be that the actual owner of an interest and the applicant for the determination of the development charge cannot be excluded as possible bidders, but as the sale is of a hypothetical freehold with vacant possession, no existing interest in the land can be taken as investing anybody with an interest in purchasing. An owner in occupation with much money invested both in the land and in the business carried on on the land might be willing to pay a fabulous price for a particular planning permission, but a purchaser in the market with no existing interest in the land would not be willing to pay that price, nor, as between a willing seller and a willing buyer, would he expect such a price to be suggested. This is the difference between the value of the planning permission and the effect of the permission on land value. There is no authority for considering any actual owner or intending developer personally except in so far as his identity is indicated by the *nature* of the planning permission, but even then he is a person without an existing interest in the land.

Agreed that s. 70 (2) refers to applicants and provides that no undue or unreasonable preference is to be shown to one applicant over another, but this issue can only arise when the identities of the possible applicants are disclosed by the nature of the permission. Then the Board may not include or exclude any facet of value unless they are prepared to include or exclude that facet whoever the applicant may be, except there be some good reason for so doing in one case which is not applicable to the other.

Indeed, in this provision, which was added in the debate on the Bill as a precautionary amendment, probably adds very little to the subsection. The broad position is that in the main the market is as impersonal as the bidders at an auction (where the only reason for refusing a bid is doubt as to the financial capacity of the bidder). The auctioneer may have fixed his reserve with a shrewd guess as to whom the auction would attract, but the reserve is common to all bidders: the Board may only guess so far as the nature of the permission justifies the guess and except for special reasons must also have a common reserve for all bidders. What those reasons might be, it is difficult to say: the power to discriminate exists if the reasons exist.

Value for special purposes.

In the average case the permission will probably be for some general use, such as a retail shop, when the personality of the intending occupier is not material, since the assumption is that the sale is of the freehold with vacant possession. The intending occupier cannot be assumed to own the premises or to have a lease thereof.

Thus, if it is known that the intending occupier is a multiple firm, whilst that might be an indication that the premises are attractive to such a firm, the valuation is of the premises with vacant possession and any demand from multiple firms is a floating demand: the value with the benefit of the permission is not more than might be paid in the market for an empty shop having due regard to all possible bidders.

Of course, if the premises are especially suited or adaptable to, say, the purposes of a chain store, the hypothetical value of the empty premises would reflect the prospects of letting for such a purpose, but might also reflect both a difficulty of letting at all apart from the demand for such a purpose and the absence of any lease or other interest in the shop by any firm running a chain store.

It is, however, a material consideration that probably nobody would construct or adapt premises for the purposes of a chain store without occupation by such a store being definitely in view. A chain store building which has fallen empty is not, therefore, a proper parallel. The bidder, whoever he may be, desires possession in order to develop, so that the chances of subsequent occupation must as a rule be ranked highly, but not as highly as if a store had signed a contract to purchase or lease. To some extent, therefore, the consent value may reflect the possibility of a lease with " covenant " value. The refusal value may, of course, also have its own " covenant value ".

Consideration of special purpose shops (and the same principles will apply to offices and other types of accommodation) leads up to consideration of those unusual types of development for which there is a very limited demand from one or two bidders only.

Where the market is thus limited the valuer will apply the normal principles of his art, considering the extent of land suitable for that purpose and, having regard to the nature of the development, likely to be made available or earmarked for that purpose by planning authorities, the number of persons likely to be in the market to buy for that purpose in that place, and the advantages of the development to a purchaser of the land. He must not consider the value of the land to the bidder as if he were already the owner, but must consider at what level a willing bidder and a willing seller might meet.

This is consistent with the Indian case[3] judgment referred to in para. 37 of Practice Notes in which it was said as to sellers: " if the *owner* of the land is the only person who can do so [realise the potentialities of the land] the value to him must be ascertained by reference to what profit he might thereby have been able to derive from the land in the future. . . . In valuing the land . . . as between *him* and a willing purchaser, the value to *him* of the potentiality *would necessarily* have to be included ". In other words a willing seller is not a willing loser, but the judgment says that as regards buyers " the wish of a particular *purchaser*, though not his compulsion, may always be taken into consideration for what it is worth ". The Practice Notes omit the first quotation, which is really necessary as a contrast fully to appreciate the second. There is nothing to suggest that the hypothetical owner of the notional fee simple has more than ordinary powers, so that there could be no special value to the *owner* to be included. Where there is a special value to the *purchaser* the words " value to him of the potentiality " are not used : the expression is the very much weaker one that " the wish of the purchaser may be taken into consideration for what it is worth ".

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[3] [1939] A. C. 302 at p. 312.

When the permitted development could only be carried out by a certain obvious person he must be considered as constituting the market; but, in so considering a particular person instead of a general market, regard must be had to all the things which would affect his particular mind, including injury to his own adjacent property (if any), and it must still not be overlooked that the hypothetical sale is between a willing seller and a willing buyer of land. There is accordingly no question of ransom. Neither the purchaser's need nor his duty is the measure; the better assumption is that although he wishes to carry out the development, he is not obliged to do so to the length of submitting to unreasonable demands. It would not be a reasonable assumption that the buyer would be willing to give a price equal to the value to himself, thus giving to the vendor the whole benefit of the special value he could not himself realise. Nevertheless, it is clear from the Indian case (in particular the quotation—para. 39 of the Practice Notes) that a seller is not unwilling because he requires something for the value of the land for the special purpose, and the willing purchaser is usually willing to pay some part of that value. The question is, where should the two reasonably meet ? A willing seller would be willing to take and a willing buyer to pay, a good price; but if the seller can require 100 per cent. of the special value to the buyer the word " willing " might just as well be omitted (*cf.* paras. 73 and 74 of Practice Notes).

If there is more than one possible purchaser it is a question to what heights their needs would force them in an open market. That may depend upon the degree of competition or the mutual accommodation between the bidders. In any event, it is unlikely that all their needs will be equally vital and a vendor would not fix his reserve in a narrow market on the assumption that the bidders would force the successful one to pay a price representing the full special value.

It is, in short, all a matter of market values and if market values could be fixed by rules, there would be no need for valuers. The function of rules is to qualify the nature of the market, and value within the qualified market is still a matter for valuers. Possibly in that respect para. 40 of the Practice

Notes would better have been omitted. District Valuers may well be given interpretations of the law, but the valuation should be left to their professional competence.

Non-profitable developments.

If the development is non-profitable the willing purchaser would offer nothing for the land except of necessity, *i.e.*, where the land has a special value to the seller, or the seller is not a willing seller, or the land has to be acquired in competition with a demand therefor for other purposes. How then can a development charge be estimated except on an arbitrary formula derived out of the assumption that a permission ought to be worth something?

A fire station has to be erected on land available, and in the past authorities have had to acquire that land at a price including all the potentialities represented in its general market value. But if the benefit of a permission for a fire station is to be valued as such, what is it worth? Could it vary with all the potentialities of the particular piece of land selected, on this site £x and on that site £y? Is the criterion the highest price the authority would pay rather than forego a fire station in the locality? Is it a figure to be arrived at on a formula yet to be invented? Or is it the least the authority can purchase for? Take away a free market and require land to be valued solely for the intended use and there is no yardstick for measuring the value of land required for the exercise of a costly duty.

Admittedly notional values have been placed on such occupations of land in the past for purposes of rating, on the hypothesis that if they did not possess the fire station (or whatever it might be) the authority would have been willing to rent it. The rental (and rateable) value has, however, depended in the past in part on the value of the land. There is a yardstick in building costs; there was a yardstick in land values. In a central area a high commercial value may have been paid for a school site and in another area residential value may have been paid. Both were payments under compulsion, and if a school site can be bought in future at agricultural value there is no ground for imposing a development charge. Para. 42 of the Practice Notes is, in fact, wholly misconceived.

Of course, if the purpose of acquisition is a general purpose, one cannot look at the financial arrangements behind the development: *e.g.*, if houses are to be erected under subsidies and let at a loss, the development charge must be related to the profit which might be made on the development of houses.

B. The Regulations

The functional part of the Development Charge Regulations (SI 1948, No. 1189) made under s. 70 (3) is the Schedule which reads as follows:—

> 1. Development charge shall be determined so as to secure, so far as is practicable, that land can be freely and readily bought and sold or otherwise disposed of in the open market at a price neither greater nor less than its value for its existing use. This object is the Governing Principle by which the Board are to be guided in determining development charge.
>
> 2. Development charge shall not be more than the amount which, to the satisfaction of the Board, represents the additional value, measured by normal processes of valuation, of the land due to planning permission for a particular development.
>
> 3. Development charge shall not be less than the amount referred to in para. 2 of this Schedule, unless in the opinion of the Board the charge ought properly to be less in order to comply with the Governing Principle.
>
> 4. Where in the special case of any land of a class referred to in Part VIII of the Act (which provides for the application of the Act to special cases) the application of the foregoing principles would, in the opinion of the Board be inappropriate, the Board shall apply the Governing Principle subject to a modification as is in their opinion appropriate to that special case.

If an owner of land can see no way of securing more than the "value" for the existing use he will probably see no reason for selling, except for those necessities or extraneous purposes which in any event periodically bring land into the market. If development charge is to be determined so as to secure that land sells freely and readily at existing use value, it must be levied at a level which leaves the owner with an incentive to sell, *i.e.*, the practicability of sale at more than existing use value. That seems to be something like a paradox.

The level of development charge cannot affect the existing use value, save only on one assumption. If A has, for example, a farm, it will always be saleable according to its value as a farm. If, however, it has potentialities for a more valuable use, its price as a farm may be hardened if one may assume there to be competition for it from those who hope to obtain permission to change the use. The level of development charge could discourage that competition. The Board, wrongly it is thought, do not accept this competition as an ingredient of " value without the benefit of the permission " (Practice Notes, paras. 53–54). Therefore, in the view of the Board, para. 1 of the above Regulations is meaningless.

Para. 2 is substantially a paraphrase of s. 70 (2) except that (a) instead of giving an answer to which " regard " is to be had, it gives a maximum figure, and (b) the answer is to be arrived at by normal processes of valuation. There is a third difference which we will refer to in considering para. 3. It is, however, clear from para. 1 that buying and selling is envisaged so that here again the basis is market value (the additional market value of the land due to the permission). If one arrives at true market value the process whereby one does so is probably unimportant, except as a means of convincing somebody else, but procedure by a normal process of valuation can achieve an answer which may be far removed from market value: it all depends on the figures one uses in the process. Therefore, all that para. 2 really does is to specify a ceiling for development charge, but even then one may doubt whether the result of the valuations under s. 70 (2) could have been exceeded by the Board without very clear authority.

Para. 3 refers back to art. 1 and as in the view of the Board art. 1 appears to mean nothing, presumably para. 3 in their view means nothing. If, however, it is admitted that the competition for other uses can be taken into consideration, then para. 3 means that the Board may modify the result of the valuation under para. 2 (or s. 70 (2)) to ensure than the land sells freely and readily.

Para. 2 differs from s. 70 (2) in referring to the " permission " instead of the " benefit of the permission ". In so far as this requires the application of the Board's view of " refusal value " and para. 3 requires the result of applying para. 2 to be adopted as a minimum, the latter article would seem to be *ultra vires*.

Para. 4 provides that where the foregoing principles would be inappropriate to a special case under Part VIII of the Act, the Board can modify and apply the (in their view) meaningless Governing Principle as may be appropriate !

In short, the regulations under s. 70 (3) are so vague as to be practically useless, and in the Practice Notes they achieve no more than a passing mention in para. 35.

Level of Development Charge.

As it has been suggested in many quarters that development charge should be collected at less than the full difference between the values specified in s. 70 (2) the power for the Board to do this, or the Treasury to direct it, may here be considered.

If it had simply been said that the Central Land Board should determine development charges and no guidance had been given, they could have taken into consideration anything they thought relevant and within their functions. It is not one of the functions of the Board to decide where development ought to be encouraged[4] and they cannot, therefore, have regard to that factor in determining a development charge. They cannot have regard to any factors involving disregard of s. 70 (2) whereby, in determining whether and if so what development charge is payable in respect of a development, they are to have regard to the difference between certain valuations. That in itself gives them no option, of their own volition, but to apply that difference for they either have regard thereto or they do not (cf. *Monro* v. *Burghclere* (*Lord*), [1915] 1 K. B. 291).

Guidance may be given to the Board by the Treasury, but the extent of this is expressly provided for in, and limited by, s. 70 (3). The powers of the Treasury are " subject to the provisions of the last foregoing subsection ", *i.e.*, the Treasury can lay down principles guiding the Board as to how they shall have regard to the valuations under s. 70 (2) but cannot direct that the charge shall be *p* per cent. of the difference between the two values. That would not be laying down a principle to guide the Board, but imposing an absolute rule.

For the Treasury to have the power to fix a definite percentage, one would expect to find that power very carefully expressed in the Act, for if without such express permission it has any such power at all, it has boundless power.

It would seem, therefore, that the Treasury could not authorise a general reduction of the level of charge, but could lay down a principle for the guidance of the Board that they should reduce the result of the valuations under s. 70 (2) as may be necessary to avoid development charge being an undue deterrent of land being offered for sale or otherwise being made available for development, whilst, as far as consistent with this aim, not enabling owners to reap substantially more than the market value for the existing use.

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[4] See *Earl Fitzwilliam's Wentworth Estates Co.* v. *Minister of Town and Country Planning*, *post*, p. 296.

Expedited Completion of Purchase

By Douglas Barlow

Senior Assistant Solicitor to the Corporation of the City of Portsmouth

Expedited completion of purchase is a method laid down by Parliament for speedy acquisition of land. The powers are contained in the Sixth Schedule to the Town and Country Planning Act, 1944, and these powers are expressly preserved by s. 39 of the Town and Country Planning Act, 1947, and set out in the Eleventh Schedule.

Advantage.

The main advantage to an acquiring authority of using this method is that the land vests in fee simple in the authority at a given date without any conveyance. Where other methods of compulsory acquisition are used, the acquiring authority may enter and take possession after serving a notice to treat and a notice of entry, but nevertheless, they are unable to dispose of the land by way of sale or lease until such time as it is actually conveyed. On the other hand, with the expedited completion of purchase procedure, the authority can deal with the land in any manner they wish (subject to the consent of the Minister under para. 19 of the Eleventh Schedule to the 1947 Act) as once the land is vested they own the fee simple and the vesting declaration is the document of title. (See Appendix " A ", *post*, p. 276, for precedent.)

The compulsory purchase order.

In order that the expedited procedure can be adopted, the order as confirmed by the Minister must include a direction that the provisions of the Sixth Schedule to the 1944 Act should apply to the order, and the Minister can only do this if an application is made to that effect by the acquiring authority when the order is submitted to him. The application takes the form of a statement in the order itself, the wording of which is set out at paragraph 4 of form No. 6 in the Compulsory Purchase of Land Regulations, 1949 (SI 1949, No. 507).[1]

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[1] See *Encyclopædia of Planning, Compulsory Purchase and Compensation*, Vol. II, p. 840.

When the order containing a direction as to expedited completion of purchase is confirmed by the Minister, it must immediately be registered in Part VI of the Register of Local Land Charges (s. 39 (2) of the 1947 Act, and art. 4 of the Registration of Orders and Lists of Buildings Rules, 1948, SI 1948, No. 1213)[2] and the date upon which it is registered is the date when a notice to treat is deemed to be served. The confirmation order must also be advertised in the local press and the advertisement must include a notification that every person entitled to claim compensation is invited to notify the acquiring authority of their name and address. This will ensure that a notice is served on them when the land is vested.

The vesting declaration.

The earliest date upon which the acquiring authority can execute a vesting declaration is two months from the date of publication of the advertisement of the confirmation of the order, unless the order itself when submitted contained a statement that there should be a shorter period than two months and this has been approved by the Minister. Although under s. 123 of the Lands Clauses Consolidation Act, 1845,[3] the powers of compulsory purchase expire after the prescribed period (or three years if no period is prescribed), it is sufficient if the notice to treat is served within the period. A deemed notice to treat under the Sixth Schedule to the 1944 Act[4] has, for the purposes of s. 123 of the Lands Clauses Consolidation Act, 1845, the same effect as an actual one, and it should be remembered that a deemed notice to treat was automatically served on the day the order was registered in the Register of Local Land Charges. There would therefore appear to be no limit as to the time within which a vesting declaration must be executed.

As soon as possible after executing the vesting declaration, preferably on the same day, the acquiring authority must serve a notice (see Appendix "B", *post*, p. 277, for precedent) on all occupiers of the land (other than the land in which a minor tenancy or a long tenancy which is about to expire is subsisting) and on all other persons who have given notice of their interest, describing the area and stating the effect of the declaration.

The land will vest in fee simple in the acquiring authority at the expiration of the period mentioned in the vesting declaration from the date on which the service of notices is completed (as to which date a certificate by the acquiring authority is conclusive), but this period must not be less than fourteen days. It is important to notice the words " at the expiration . . . the service of the notices is completed ", because if the period mentioned in the vesting declaration is fourteen days, it will really be sixteen days from the date of the vesting declaration before the land vests. For instance, if the vesting declaration is dated the first day of the month and the notices are served by registered post on the same day, " the completion of the service of the notices " takes place on the second day (unless it be a Sunday or other day when there is no postal delivery, in which case it would be the third day), and " the expiration of " fourteen days from the second day is midnight on the sixteenth day. It follows that the property vests on the seventeenth day.

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[2] *Ibid.*, Vol. I, pp. 416, 880.
[3] *Ibid.*, Vol. II, p. 284.
[4] *Ibid.*, Vol. II, p. 575.

The vesting declaration must contain a statement that the land vests in the acquiring authority at the expiration of a stated period and also state the authority's intention to enter and take possession of the land.

It is not necessary to serve a notice of entry as the land is in the absolute possession of the acquiring authority to deal with or dispose of as they wish, subject, of course, to the consent of the Minister as mentioned above.

As the ownership has passed, interest, at present at the rate of 3½ per cent. as laid down in the Acquisition of Land (Rate of Interest on Entry) Regulations, 1947 (S. R. & O. 1947, No. 791)[5] is payable on the purchase money from the effective date (in this case the seventeenth day) until the purchase money is paid over. It makes no difference whether or not the acquiring authority have actually taken physical possession.

It is not necessary to vest all the land comprised in the compulsory purchase order in one vesting declaration; any number of declarations can be made from time to time until all the land in the area has been taken up.

Assessment of compensation.

The notices sent out at the time the vesting declaration is executed should be accompanied by a blank form of claim which should be returned duly completed as soon as possible.

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[5] *Ibid.*, Vol. II, p. 810.

It is then sent by the acquiring authority to the district valuer and he agrees the amount of compensation with the vendor or his agent; in default of agreement, the matter can be referred by either party to the Lands Tribunal under the Lands Tribunal Act, 1949.[6] As soon as the amount of compensation is agreed, the district valuer will send a report to the acquiring authority and they then write to the vendor's solicitor for an abstract of title. If this is satisfactory, the deeds (if they only relate to the specific property) and a receipt for the purchase money (see Appendix "C", *post*, p. 279, for precedent) are exchanged for the purchase money. There is no conveyance, and the vesting declaration becomes the document of title. If any deeds are retained by the vendor, he is deemed to have given to the acquiring authority an acknowledgment in writing of the right to production and delivery of copies and (except when he retains possession of the deeds as a mortgagee or as a trustee or otherwise in a fiduciary capacity) an undertaking for safe custody. S. 64 of the Law of Property Act, 1925, has effect on the basis that the acknowledgment and undertaking do not contain any such expression of contrary intention as is mentioned in that section. It is useful to incorporate an acknowledgment in the form of receipt for the purchase money (see Appendix "C", *post*, p. 279, for precedent).

Stamp duty.

It must be remembered that there may be many individual properties contained in the area of a vesting declaration, and the completions will take place at different times. It is for this reason that the period of three months mentioned in s. 12 of the Finance Act, 1895, does not apply, and the document need not be stamped within this period. Instead, it must be stamped as soon as the purchase money is finally ascertained. In practice, this is when the money is paid over to the vendor and completion is effected. The vesting declaration should be sent to the Controller of Stamps for the first time when the purchase money is ascertained in respect of the first completion. It should subsequently be forwarded at intervals of three months to have the additional stamp duty impressed in respect of those completions which have taken place during the preceding three months. The purchase moneys cannot be aggregated and must be treated as separate transactions. If the consideration money is less than £500,

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[6] *Ibid.*, Vol. II, p. 595.

£1,500 or £1,950 in any individual case, the usual certificate that the transaction effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds £500, £1,500 or £1,950 as the case may be should accompany the vesting declaration. There should be a separate certificate for each property and it should be in duplicate, one copy of which will be returned by the Controller of Stamps. (See Appendix " D ", *post*, p. 270, for a form of certificate.)

Solicitor's costs.

The Act of 1947 (s. 38 (4)),[7] applies the Acquisition of Land (Authorisation Procedure) Act, 1946, to compulsory acquisitions, and this Act in turn, by s. 1 (3) and Part I of the Second Schedule,[8] incorporates s. 82 of the Lands Clauses Consolidation Act, 1845.[9] The acquiring authority, therefore, must pay the vendor's solicitor's costs. These costs, however, will be only in accordance with Sched. II of the Solicitors' Remuneration Order, 1883, as amended, and not Scale costs under Sched. I.

APPENDIX " A "

THIS VESTING DECLARATION is made the —— day of —— One thousand nine hundred and —— by —— (hereinafter called " the Council ")

WHEREAS :

(1) On the —— day of —— One thousand nine hundred and —— the Council being the local planning authority within the meaning of Section 4 of the Town and Country Planning Act 1947 (hereinafter called " the Act ") in exercise of the powers conferred on them by [sub-section (1) of Section 38 and paragraph 17 of the Tenth Schedule to] the Act made an Order entitled The —— Compulsory Purchase Order 19—— for the compulsory purchase of certain lands specified in the Schedule thereto which Order contained a direction that the provisions of the Sixth Schedule to the Town and Country Planning Act 1944 (as amended by the Act and set out in the Eleventh Schedule thereto) providing

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[7] *Ibid.*, Vol. II, p. 464.
[8] *Ibid.*, Vol. II, pp. 398, 427.
[9] *Ibid.*, Vol. II, p. 259.

for expedited completion of purchase should apply to the Order as respects [the whole] [part] of the land comprised therein

(2) The Minister of Local Government and Planning on the —— day of —— One thousand nine hundred and —— confirmed the said Order in the form as [modified and] set out in the Schedule to the —— Compulsory Purchase Confirmation Order 19—— and directed that the said provisions for expedited completion of purchase should apply

(3) Notice of such confirmation was duly published in the form and manner prescribed on the —— day of One thousand nine hundred and ——

NOW THIS DEED WITNESSETH that in pursuance and in exercise of the power for this purpose conferred on the Council by the Act the Council to the intent to vest in themselves the fee simple in possession free from incumbrances of and in the lands shown on the plan annexed hereto and thereon delineated and coloured —— and described in the Schedule hereto [being part only of the lands described in the Schedule to the Order] [as modified] hereby declare that they intend to enter on [such part of] the said lands and to take possession thereof at the expiration of —— from the date on which the service of notices required by sub-paragraph (3) of paragraph 3 of the Sixth Schedule to the Town and Country Planning Act 1944 as amended as aforesaid has been completed and that such lands shall at the expiration of the said period of —— vest in the Council in fee simple

IN WITNESS whereof the Council have caused their Common Seal to be hereunto affixed the day and year first before written

THE SCHEDULE

THE COMMON SEAL etc.

Town/Clerk/ of the County Council.

APPENDIX " B "

Town and Country Planning Act 1947

——*Compulsory Purchase Confirmation Order* 19—

To : —— of ——

NOTICE IS HEREBY GIVEN that the Council of —— (hereinafter called " the Council ") on the —— day of —— 19— in pursuance of their powers conferred on them by the Town and Country Planning Act 1947 executed a Declaration of their intention to enter on the land described in the Schedule hereto and shown on the plan annexed to the Declaration and thereon delineated and coloured ——, and to take possession thereof at the expiration of —— from the date of the completion of the service of this notice.

At the expiration of the said period of —— the right to enter and take possession of the lands to which the Declaration relates will vest in the Council without the previous consent of the owners or occupiers of the lands, or without compliance with the provisions of Sections eighty-four to ninety of the Lands Clauses Consolidation Act 1845, and the land will vest in the Council as if the Council were under that Act promoters of an undertaking having powers to execute a Deed Poll for vesting in them the lands, or any estate or interest in the lands, or for the extinguishment of any service, rent-charge, chief or other rent, payment or incumbrance. Such right of entry and vesting of the land are subject to the restriction that in the case of a long tenancy which is about to expire or a tenancy for a year, or from year to year, or any less interest, the right of entry is not exercisable and the vesting of the lands in the Council is subject to any such tenancy during its subsistence but without prejudice to the powers of the Council under the Lands Clauses Acts to require a tenant to give up possession.

On such vesting as aforesaid, the Council shall be liable to pay the like compensation for the said land and interest on the compensation agreed or awarded as they would have been required to pay if the provisions of Sections eighty-four to ninety of the Lands Clauses Consolidation Act 1845, and the provisions thereof compliance with which would have been requisite in order to render the said powers exercisable by them, had been complied with.

A copy of the Vesting Declaration and the map referred to therein have been deposited at —— and may be seen there at all reasonable hours.

A form of claim is attached.

THE SCHEDULE

DATED this —— day of —— 19—

Town/Clerk/ of the County Council.

Address :

APPENDIX "C"

I/We —— of —— hereby acknowledge that I/We have this —— day —— of —— RECEIVED of —— (hereinafter called "the Council") the sum of —— being the purchase money payable to me/us in respect of —— which property was vested in fee simple in the Council by a Vesting Declaration made on the —— day of —— by the Council in exercise of the powers conferred on them by the Eleventh Schedule to the Town and Country Planning Act 1947.

*I/We further hereby acknowledge the right of the Council to production and delivery of copies of —— and undertake the safe custody thereof.

DATED this —— day of —— 19—

2d. Stamp.

* Omit this paragraph if not required.

APPENDIX "D"

—— *Compulsory Purchase Confirmation Order* 19—

Particulars of property acquired by —— pursuant to a Vesting Declaration, dated the —— day of —— 19—.

Particulars of property Acquired	Name and Address of Vendor	Date of final ascertainment of consideration	Consideration paid

IT IS HEREBY CERTIFIED that the transaction effected as above does not form part of a larger transaction or of a series of transactions *[in respect of which the amount or value or the aggregate amount or value of the consideration exceeds (FIVE HUNDRED POUNDS) (FIFTEEN HUNDRED POUNDS)].

Town/Clerk/ of the County Council.

Address : ——. Date ——.

* Omit words in square brackets if consideration is between £1,500 and £1,900.

Penal Assessment of Development Charge

By HAROLD POTTER, LL.D., Barrister-at-Law

We have from time to time expressed a doubt whether the liability to a penal assessment of development charge is limited by the four years applicable to an enforcement notice. A learned correspondent has suggested that this doubt is unjustified and that in fact no liability can continue beyond this period. Fundamentally his argument turns upon the fact that under s. 70 (2) in determining whether any development charge is payable under Part VII (the Part which includes penal development charge) "the Board shall have regard to the amount by which the value of the land with the benefit of planning permission for those operations or that use (calculated . . . on the assumption that the operation or use can lawfully be carried out or made apart from the provisions of this Act) exceeds the value which it would have without the benefit of such permission . . .". The learned correspondent then says that, as no enforcement notice can be served, no permission is needed and, therefore, no benefit is obtained by any planning permission, and consequently, no development charge can be assessed.

There is, of course, much to be said for this contention and this is one of the many cases in which even the express words of the Act leave room for doubt. But we think with respect that the contention would not necessarily prevail for several possible reasons. It assumes that the rather different wording of s. 74 (1) does not in fact exclude this interpretation by inference, because it imposes a limit which would have been imposed if a planning permission had been obtained but otherwise leaves the matter at discretion. In other words s. 70 (2) may not apply to s. 74 (1) directly at all.

Apart, however, from s. 74 (1) and assuming that the test supplied by s. 70 (2) is the relevant one, there seem to us to be other difficulties to be overcome.

(1) Where a development charge is assessed without planning permission what is the relevant date for determining the facts? The natural course would be to assess upon the basis of the facts at the date of contravention, not at the date of

assessment. The straggling provisions of s. 74 do not make this clear and, indeed, seem to contemplate post-contravention incidents: see s. 74 (4). Nevertheless, it is suggested that one possible, if not probable, interpretation is that the assessment would proceed on the basis of the conditions at the date of contravention and this would, of course, defeat the argument put forward by our learned correspondent, because those conditions would include the necessity for planning permission.

(2) Section 74 (4) provides that the provisions of this section shall apply whether or not planning permission was granted under Part III. No doubt the purpose of the provision was to cover cases where by inadvertence or otherwise a planning permission was granted under Part III before assessment of development charge, but it is suggested that the argument put forward by our learned correspondent would render this provision nugatory. The provision is strong evidence either that the conditions prior to contravention determine the amount or, alternatively, that the contention put forward by our correspondent of the interpretation of s. 70 (2) is not correct.

(3) It is suggested that the wording of s. 70 (2) is not free from ambiguity. The contention of our learned correspondent confers upon a contravening use a title to the use that is less than a planning permission but which renders a planning permission unnecessary and so that a planning permission confers no additional value on the land. This is a neat by-product of the legislation and provides us with three grades of "use": (i) contravening; (ii) permitted; (iii) lawful but not "permitted". But we suggest that the words of s. 70 (2) really could be construed to mean "that value which the land has by obtaining a lawful use which formerly it did not have": this is the significance of the words in brackets which otherwise are difficult to construe. We do not say that this *must* be the interpretation of this subsection, but merely that we think it a possible interpretation when construing the Act as a whole. This is rendered the more probable, if the nature of development charge is considered. Development charge is not a tax or a penalty but a price paid for something which has been bought by the Crown for the sum of £300,000,000. We may think that the Crown acquired a bargain, but there seems to be no reason why the sale by the Crown should be restricted. A contravening use is, in effect, a form of trespass, which, in

the ordinary case of land, could have been remedied by the Crown at any time within a period of 30 years by an action to recover possession: Limitation Act, 1939, s. 4 (1). The analogy of trespass must not be strained too far and it is not suggested that the Limitation Act does apply. We merely wish to point out that deprivation of the Crown of its right to development charge because of lapse of time for enforcing a summary remedy for contravening use is not a " natural and probable ", though it may be a " legal ", consequence of the provisions relating to enforcement notice.

(4) There is implicit in our learned correspondent's view a further point, namely, that a period of four years' contravening use legalises its use so that it could not be restrained by any other proceedings. We are not satisfied that this may be the case. There is nothing in the Act to suggest that an enforcement notice is the sole means of dealing with a contravening use, though it is clearly a convenient one. It may well be argued that, even if there were other remedies, this would not enable a penal development charge to be assessed, because it would not be open to a planning authority to obtain, say, an injunction and then grant a planning permission. It is suggested that this reasoning is not sound. There is nothing to prevent a plaintiff recovering possession of land and then forthwith entering into a contract to sell it to the defendant. The point of the injunction, if that was the appropriate remedy, would simply be to prevent the continuance of *unlawful* use. Having established that it was " unlawful ", it then falls to be determined whether or not it is to be legalised and if so upon what conditions; but this will involve the payment of a development charge. Hence, whether or not permission is given for the further use we think it not improbable that a penal development charge would be payable in respect of the contravening period and this seems implicit in the second part of s. 70 (4). This view is, however, dependent upon the great uncertainty which is entertained concerning the period for which a contravening use does in fact remain a contravening use, and, whether, even if it becomes legalised by long use or otherwise, a development charge may be payable in respect of the period of contravention.

No one with any practical experience of the working of this Act will have any doubt about the ultimate importance of this point. There are, particularly in country districts probably, many contraventions coming into existence, wittingly and unwittingly, and it is too much to expect that chance visits of officials will detect them at any particular time. It will be peculiar if this development charge is going to depend on the accidents of official duties within quite a short time. Let us, however, conclude by saying that we consider the whole question full of doubt and some ambiguity. If this Act is not to be amended we can only hope for judicial guidance as soon as possible.

Correspondence

To the Managing Editor,
Journal of Planning Law.

The Assessment of Claims under Section 59

Sir,

We give below an example assessment showing how the appropriate payment under s. 59 is computed. To illustrate our point, we have included alternative figures in Part A of the computation and it will be noted how greatly the adoption of one or other set of valuations affects the s. 59 payments.

This case (purely hypothetical) concerns a war damaged site in a good business area. The former building was residential but had good business potentialities which were taken into account in agreeing the before-damage value under the 1943 Act.

We will suppose that the claimant's surveyor and the District Valuer are in entire agreement on figures, except as to the unrestricted value of the bare site. Thus, we have the following valuations:—

(A) *The Development Value*

	District Valuer's Valuation	Claimant's Valuation
Unrestricted Value	£1,400	£1,500
Restricted Value	250	250
Development Value	£1,150	£1,250

(B) *The "War-damage Loss"*

Restricted before-damage Value	£1,450
Restricted after-damage Value	250
"War-damage loss"	£1,200

(C) *Value Payment Figures under 1943 Act*

Before damage	£1,900
After damage	1,000
Basic value payment	£ 900
Actual value payment—£900 plus 45% equals	£1,305

We have now arrived at the point where we apply the formulæ set down in the s. 59 Scheme:—

If we take the District Valuer's valuation—

The development value is less than the war-damage loss. Therefore, the s. 59 payment is the development value, £1,150, in hard cash at 20s. in the £. There would be no payment under s. 58.

If we take the claimant's valuation—

The development value is greater than the war-damage loss. Therefore the s. 59 payment is the war-damage loss minus the value payment, or £1,200 minus £1,305, which is nil. The claim would presumably be agreed under s. 58 at £1,250.

What we have set out to demonstrate is the fact that by £50 one way or the other, the payment has changed from (1) £1,150 in cash in full, to (2) an unknown sum under a scheme not yet published, with payment in government stock at x shillings in the £.

Unless there is something we have overlooked or misinterpreted, it seems that the scheme is far from satisfactory.

Yours faithfully,

VICTOR W. HINDWOOD & Co.

Auctioneers, Surveyors, Valuers, Estate Agents.

Charlton Road, S.E.3.

MINISTRY OF LOCAL GOVERNMENT AND PLANNING CIRCULARS

[*Continued from* [1951] J. P. L. 149]

Circular No. 18, dated April 12, 1951. Town and Country Planning (Amendment) Act, 1951. [2*d*.]

Circular No. 28, dated April 12, 1951. Urgent Development by Government Departments in connection with the Defence Programme. [2*d*.]

Development in Barsetshire

Extension of the Garden of a Dwelling-house

The following conversation may be assumed to have taken place between S., a surveyor, and D.V., the district valuer, during an informal discussion on development charge.

D.V. I believe you have a personal interest in this case, since it concerns " The Coamings " at Barchester; isn't that your own house?

S. Yes. In a moment of excess piety I applied for planning permission to add about half an acre to my garden. I don't think I really needed permission, but instead of saying so the local planning authority granted it formally. Hence my visit to you, but if you agree that I didn't need the permission I won't have to trouble you any further.

D.V. It is not really my business to say whether you need permission or not—the fact is you have got it. However, what are your grounds for suggesting that there is no development?

S. Well, let us take it in stages. First, I've always had a gate in my fence leading on to this extra land, even before the appointed day.

D.V. But did you own or rent the land in question then?

S. No.

D.V. Then I can't agree that it was within the curtilage of your house at that date.

S. Very well. Next, I am erecting a fence to enclose the land on three sides. Do you agree that this will be exempt under paragraph 8 of the Schedule to the Development Charge Exemptions Regulations, 1950 (SI 1950, No. 1233)—and incidentally is permitted development under Class II of the First Schedule to the General Development Order, 1950 (SI 1950, No. 728)?

D.V. The latter would not necessarily exempt you from development charge, but I agree that the former does, so far as the actual operation of erecting the fences is concerned. The development you propose to carry out within the fences is not exempt, however.

S. Wait a minute. I propose to use the half acre as an orchard. Now, if you will turn to the proviso to s. 12 (2) of the Act you will see that certain uses of land shall not be deemed to involve development, including (*e*) "the use of any land for the purposes of agriculture . . .". You will recall also that the definition of agriculture in s. 119 includes fruit growing. It also includes horticulture and animal keeping, so that I can grow flowers if I want, as well as keep bees or rabbits. That being so, there is no development, and nothing on which you can levy development charge.

D.V. I venture to disagree with you most strongly, and I am fortified by the decision of the Minister of Town and Country Planning in an appeal which is referred to in the July Bulletin of Selected Appeal Cases.[1] It is number VIII/20, and was very similar to your case except that the appellant pleaded s. 12 (2) (*d*), whereas you are banking on s. 12 (2) (*e*).

S. What was the Minister's decision?

D.V. The Minister said he could not accept the contention that the proposal should be deemed not to involve development by virtue of s. 12 (2) (*d*) of the Act. In his opinion the change of use proposed was a material one.

S. I agree that there is a weakness in pleading s. 12 (2) (*d*) because it seems that to enjoy the benefit of it the land must be within the curtilage, but s. 12 (2) (*e*) refers to the use of *any* land, so the curtilage has nothing to do with it.

D.V. Well, all this has been very interesting, but to come down to brass tacks, the Minister has decided that the extension of a private garden is development, and so, in your case, have your local planning authority. In these circumstances I have no option but to make a valuation. Shall I begin with the Refusal Value—we will probably be more nearly in agreement on that?

S. What is your figure?

D.V. I take half an acre at the very generous price of £200 an acre, equals £100.

S. If you will please look at paragraphs 38 and 39 of the PRACTICE NOTES—you ought to read them some time, you know—the Board state the basis to be adopted where there is a special purchaser or only one available purchaser, which may be the case here. As I understand it the basis is to be applied both to the Consent Value and Refusal Value, subject of course to the different definitions. My point is that if I am a special purchaser of this land for an extension of my garden, I am equally a special purchaser of it merely to prevent someone else building on it and spoiling my house. The price which I would pay for this purpose is, I submit, relevant in arriving at Refusal Value. Further, I am of the opinion that I would pay just the same price merely to own it and keep the other fellow out as I would to add it to my garden.

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[1] Reference may also be made to *Sampson's Executors* v. *Nottinghamshire County Council* (1949), 1 P. & C. R. 1, *per* Lord Goddard, C.J., at p. 8, and *Sinclair-Lockhart's Trustees* v. *Central Land Board* (1950), 1 P. & C. R. 195, 320.

D.V. I can't agree that the two values would be the same, because in the Consent Value you can bring it within your curtilage and in the Refusal Value you can't. I put the Consent Value at £375, which is equivalent to £750 an acre. That gives a development charge of £275 after allowing the £100.

S. From the £375 you should take the cost of fencing, laying out and planting. I've had an estimate of £250 for the whole lot.

D.V. I don't think I should, because as you have pointed out the fencing is exempted development, and the tree planting is agricultural and comes within s. 12 (2) (*e*). In any case you actually paid £375 for the land knowing that you would in addition incur this expenditure.

S. You spoke of the land being within the curtilage for Consent Value but not for Refusal Value. I don't agree that this is necessarily so if you use the " Before and After " method of valuation (paragraph 40 of the PRACTICE NOTES). The Board gave an illustration of a cinema and car park, saying that the aim is to arrive at the additional value of the piece of land for the change of use from, say, cabbages to car park. If you use the method in my case you will arrive at the additional value for a change from weeds to, say, cabbages, which, in my view, is nil.

D.V. And in my view £275.

S. Finally, in paragraph 64 of the PRACTICE NOTES in discussing the development charge on a single house and garden the Board seem to indicate that the size of garden doesn't make very much, if any, difference to the development charge, and in paragraph 65 they say " If planning consent is given for the erection of a house with a garden of a size larger than normal for the type and situation of the house, the development charge payable will not (unless the facts of a particular case warrant it) be *pro rata* for the excess area of the garden ".

D.V. Quite true. And I hope you will forgive me—I have been rather pulling your leg. I couldn't let the opportunity go by of seeing your face when I mentioned a development charge of £275 for your garden. In fact, I am recommending a "nil" charge as I usually do in these cases unless there are special circumstances.

S. (looking at his watch). If you had said "nil" at the outset I would have had time for a cup of tea. Now I am late for my next appointment!

Progress of Development Plans

(*Continued from p.* 229, *ante*)

There is, as at April 16, 1951, no further progress to report under this heading.

Under s. 5 of the Town and Country Planning Act, 1947, local planning authorities are under an obligation to submit development plans not later than July 1, 1951, "or within such extended period as the Minister may in any particular case allow".

Parliamentary Intelligence

Replies to Questions in House of Commons

The following Government replies have been given to questions in the House of Commons.

Assessment of Development Charge

In reply to Miss Ward, who said that development charges were arrived at by a process of bargaining, that many people were unaware that the original assessment was open to reduction, and that there was no uniform system, the Minister of Local Government and Planning (Mr. Dalton) said that the district valuer tells the applicant what assessment he proposes and invites him to call and discuss it. (March 13, 1951. H. C Debates, Vol. 485, col. 1297):

Consultation of Owner of Architectural and Historic Buildings

In a written reply to Mr. Gooch the Minister said that the scheduling of buildings of architectural or historic interest did not harm the owners of the buildings and it would not be appropriate to consult them in the matter. (March 13, 1951. H. C. Debates, Vol. 485, col. *131*):

Claims on £300 Million Fund—Surveyors' Fees

In a written reply to Mr. Marples the Minister stated that to the end of February, 1951, £550,014 had been paid as fees to surveyors representing claimants on the £300 million fund. (March 13, 1951. H. C. Debates, Vol. 485, col. *135*):

Development Plans—Extension of Time

In reply to Mr. Walker-Smith the Minister stated that five applications had been received by him from local authorities asking for an extension of time for the submission of their development plans. (March 20, 1951. H. C. Debates, Vol. 485, col. 2295).

Planning Permission—Buildings on Clapham Common

In a written reply to Sir H. Williams the Minister stated that buildings now being erected on Clapham Common are temporary buildings for which, under the Public Works (Festival of Britain) Act, 1949, planning permission is not required. (April 3, 1951. H. C. Debates, Vol. 486, col. 8).

Central Land Board Practice

Houses for Agricultural Workers and Smallholders

Form D.1.B. (Revised March, 1951.)[1]

1. The building of houses for agricultural workers is in law liable to development charge. An undertaking was, however, given in Parliament that the payment of charge would be postponed, and the arrangements made by the Board to carry out this undertaking were described in a leaflet D.1.B, issued in March, 1949.

These arrangements have been revised and are now as set out below. They provide for the postponement of the development charge in respect of (i) the erection of a new house; (ii) the enlargement of an existing house beyond the permitted tolerances; and (iii) the conversion of an existing building into a dwelling-house; in each case so long as the house is occupied by an agricultural worker. If the house at any time ceases to be occupied by an agricultural worker and is used for any other purpose, such as a week-end cottage, the charge then becomes payable.

For the purpose of these arrangements a forestry worker is regarded as an agricultural worker. The position of a smallholder is dealt with in paragraph 3.

2. The arrangements apply:—

(*a*) *Where a subsidy is payable under the Housing Acts on condition that the house is reserved for members of the agricultural population as defined in those Acts.*

The developer, when applying on Form D.1 for determination of development charge, should produce evidence that a subsidy is payable. The development charge will then be assessed in the ordinary way for a house. The applicant will be sent a form of undertaking to be entered into by him to enable collection of the charge to be postponed. The form requires the applicant to give two undertakings; first, that he will pay the development charge on demand by the Board—on the understanding that the Board will not make any such demand while the house is occupied by a member of the agricultural population; secondly, that he will not dispose of the house without informing the Board, thus enabling the Board to give to any new owner or lessee an opportunity of continuing the arrangement for having the collection of the charge postponed, and of cancelling the original undertaking.

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[1] This is a revised edition of Form D.1.B. which originally was issued in March, 1949, and was included as Appendix C in Practice Notes, First Series, [1949] J. P. L. 252, ff. 40.

(*b*) *Where the house is to be erected or enlarged with the aid of an improvement grant under the Hill Farming Act*, 1946 [*or the Livestock Rearing Act*, 1951 [2]].

It is for the applicant to state at the time of his application for determination of charge that he has applied for a grant. The procedure for determination of charge and postponement of collection will be as under (*a*) above. The arrangements in this sub-paragraph apply to the erection of a farm-house, as distinct from a cottage, provided the house is not larger than a smallholder's house (see paragraph 3 below).

(*c*) *Where the house is entered in the Valuation Lists for Rating as an agricultural dwelling-house under Section* 72 *of the Local Government Act*, 1929 (see however paragraph 3).

The developer should state on form D.1 that he intends to apply for the house to be entered in the Valuation Lists for Rating as an agricultural dwelling-house. The development charge will then be assessed in the normal way and the applicant will be sent a form of undertaking to be signed by him to enable collection of the charge to be postponed. The form will require the applicant to give undertakings similar to those described in (*a*) above and the Board will not make any demand for payment of the charge unless (i) the house is not entered as an agricultural dwelling-house in the Valuation Lists for Rating within twelve months from the date of determination of the charge, or (ii) the house ceases to be entered as an agricultural dwelling-house in the Valuation Lists.

(*d*) *Where the applicant cannot claim the application of the arrangements under* (*a*), (*b*) *or* (*c*) *above but where he can show otherwise to the satisfaction of the*

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[2] The Livestock Rearing Act, 1951, received the Royal Assent after Form D.1.B. had been issued. A C. L. B. Press Notice (CLB/40, dated April 6, 1951) states that a grant under this Act will afford a qualification in the same way as a grant under the Hill Farming Act, 1946.

Board that he is an agricultural or forestry worker who is covered by the Parliamentary undertaking or that the house will be occupied by such a worker.

The developer should state on form D.1 the grounds on which he claims to get the benefit of these arrangements, and should also give evidence that he is an agricultural or forestry worker or, if the developer will not himself be the occupant, that the house is *bona fide* intended for an agricultural or forestry worker—for example, that the building licence has been sponsored by the Agricultural Executive Committee. He may be asked by the Board to supply such further evidence as they may consider necessary. Development charge will be assessed in the normal way and if the Board are satisfied that the arrangements should be applied in his case, he will be sent a form of undertaking to be entered into by him to enable collection of the charge to be postponed. The undertakings required will be the same as in (*a*) above. The arrangements described in this sub-paragraph do not apply to a house which has a greater cubic capacity than 17,500 cubic feet (measured externally). (*Note: The usual type of five or six roomed dwelling-house built in agricultural areas in England and Wales by local authorities does not exceed* 15,000 *cubic feet in size.*)

3. The arrangements set out in this pamphlet do *not* apply to farmhouses (except as provided in paragraph 2 (*b*)) even where the farmhouse is occupied by a farm manager or bailiff. They apply, however, to a *smallholder*, provided:

(*a*) he occupies, for the purposes of agriculture, an area of land larger than one acre and not larger than seventy-five acres, the rental value of which is not greater than £150, and his primary occupation is to cultivate the smallholding, and

(*b*) the total cubic capacity (measured externally) of the house when first erected does not exceed 17,500 cubic feet, or if enlarged later, 19,250 cubic feet (an enlargement of 10 per cent.).

The reason for (*b*) is that the Board regard a house larger than this as equivalent to a farm-house and therefore not eligible to benefit under the Parliamentary undertaking. The covenants which will be required to be given in the case of a house occupied by, or intended for, a smallholder will include a clause to ensure that this condition is kept.

4. A hostel erected on a farm for the occupation of the regular agricultural workers employed on that farm, or a

building converted to such a hostel, also comes within these arrangements if the application is accompanied by a certificate from the Land Commissioner of the Ministry of Agriculture and Fisheries that it is intended for such occupation or is so occupied and provided the appropriate covenant is given by the developer.

5. The arrangements set out in this pamphlet do not apply to houses built by local housing authorities for agricultural workers, nor to houses built by statutory smallholding authorities.

Statutes

Town and Country Planning (Amendment) Act, 1951

(14 & 15 Geo. 6, c. 19)

An Act to bring certain works for making good war damage within the definition of development in the Town and Country Planning Act, 1947, and the Town and Country Planning (Scotland) Act, 1947, and within the Third Schedule to each of those Acts; and to extend the period limited by section twenty-three of the first-mentioned Act for serving notices thereunder for the enforcement of conditions subject to which planning permission has been granted. [March 21, 1951.]

Amendment of relevant provisions of the Town and Country Planning Act, 1947

Inclusion of certain war damage works in definition of development.

1.—(1) Paragraph (*a*) of the proviso to subsection (2) of section twelve of the Town and Country Planning Act, 1947, in this and the next succeeding section referred to as the "principal Act" (which proviso specifies operations deemed for the purposes of that Act not to involve development) shall not apply to any works for making good war damage which, apart from this provision, would fall within that paragraph.

(2) The principal Act shall have effect as if such works as aforesaid had been specified in paragraph 1 of the Third Schedule to that Act (which specifies certain development as included in existing use for the purposes of that Act):

Provided that this subsection shall not apply to any such works as aforesaid which do not satisfy the conditions of that paragraph as to the cubic content of buildings.

(3) The principal Act shall have effect, and shall be deemed for all purposes to have had effect, as if it had originally been enacted as amended by the preceding subsections:

Provided that, where any works being such as aforesaid have been begun during the period beginning with the appointed day for the purposes of that Act and ending with the thirteenth day of December, nineteen hundred and fifty, they shall, whether completed during that period or not, be treated for the purposes of that Act as if planning permission had been granted in respect thereof unconditionally.

Limit of time for serving notices for enforcement of planning conditions.

2.—(1) In subsection (1) of section twenty-three of the principal Act (which empowers the local planning authority to serve an enforcement notice where it appears to them that development has been carried out without the grant of a permission required, or that any conditions subject to which such a permission was granted in respect of any development have not been complied with, but requires such a notice to be served within four years of such development being carried out), after the words " within four years of such development being carried out " there shall be inserted the words " or, in case of non-compliance with a condition, within four years after the date of the alleged failure to comply with it ".

(2) Any power conferred by the principal Act to adapt or modify the said subsection (1) in its application to any particular matter shall have effect as if that subsection had originally been enacted as amended by this section, and any adaptation or modification thereof made in exercise of any such power before the passing of this Act shall have effect accordingly.

Amendment of relevant provisions of the Town and Country Planning (Scotland) Act, 1947

Inclusion of certain war damage works in definition of development.

3.—(1) Paragraph (*a*) of the proviso to subsection (2) of section ten of the Town and Country Planning (Scotland) Act, 1947, in this section referred to as the "principal Act" (which proviso specifies operations deemed for the purposes of that Act not to involve development) shall not apply to any works for making good war damage which, apart from this provision, would fall within that paragraph.

(2) The principal Act shall have effect as if such works as aforesaid had been specified in paragraph 1 of Part I of the Third Schedule to that Act (which specifies certain development as included in existing use for the purposes of that Act):

Provided that this subsection shall not apply to any such works as aforesaid which do not satisfy the conditions of that paragraph as to the cubic content of buildings.

(3) The principal Act shall have effect, and shall be deemed for all purposes to have had effect, as if it had originally been enacted as amended by the preceding subsections of this section:

Provided that, where any works being such as aforesaid have been begun during the period beginning with the appointed day for the purposes of that Act and ending with the thirteenth day of December, nineteen hundred and fifty, they shall, whether completed during that period or not, be treated for the purposes of that Act as if planning permission had been granted in respect thereof unconditionally.

Citation, etc.

Short title, citation and construction.

4.—(1) This Act may be cited as the Town and Country Planning (Amendment) Act, 1951.

(2) Sections one and two of this Act shall be construed as one with the Town and Country Planning Act, 1947, and that Act and those sections may be cited together as the Town and Country Planning Acts, 1947 and 1951.

(3) Section three of this Act shall be construed as one with the Town and Country Planning (Scotland) Act, 1947, and that Act and that section may be cited together as the Town and Country Planning (Scotland) Acts, 1947 and 1951.

Notes of Cases

Compulsory Purchase by Central Land Board

Earl Fitzwilliam's Wentworth Estates Co. v. The Minister of Town and Country Planning * (March 19, 20, April 13, 1951). This appeal by the company from the decision of Birkett, J.,[1] was heard by Somervell, Singleton and Denning, L.JJ. Sir David Maxwell Fyfe, K.C., and R. Davison appeared for the company: Sir Hartley Shawcross, Att.-Gen., and J. P. Ashworth for the Minister.

In this case the owners of a building estate were prepared to dispose of a building plot only on the same terms as before the Town and Country Planning Act, 1947, came into force. Birkett, J., had held that the Central Land Board had power under s. 43 of the Act to acquire the land compulsorily at " existing use value " with a view to resale to a prospective developer.

The points involved may be summarised as follows:—

1. The scope of the Act. Is it one of the functions of the Central Land Board to secure that land changes hands at existing use value only? The Attorney-General said yes: anything which will enable the Board to collect development charge is connected with its functions. He referred to the Governing Principle of the Development Charge Regulations ([1948] J. P. L. 242). The appellants contended that the Board's power of compulsory purchase contained in s. 43 (1) of the Act of 1947 was conferred for making sample purchases to test the market and not to provide housing, for which other statutory powers existed.

2. The construction of s. 43 (1). Did the last half of this subsection cut down what went before or did it enlarge it by conferring an independent power of purchase? The appellants contended that only clear words could give the Board this power to interfere with freedom of contract and intervene in transactions *inter partes*.

3. The validity of the authorisation and the finality of the Minister's " certificate of satisfaction " under s. 43 (2). The appellants' contention was that the evidence showed that the Board made the order with the wrong object—that of maintaining the policy of " House 1 "—and that the Minister gave his authorisation on a mistaken view of the law and that the principle of *Municipal Council of Sydney* v. *Campbell*, [1925] A. C. 338, applied.

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* A full report of this case will be published in *Planning and Compensation Reports*.

[1] See [1950] J. P. L. 694; 1 P. & C. R. 169.

The respondents relied on *Point of Ayr Collieries* v. *Lloyd George*, [1943] 2 All E. R. 546, as precluding the Court from going behind the Minister's affidavit.

The Court, Denning, L.J., dissenting, dismissed the appeal. All three members of the Court agreed that the motive of enforcing the policy of "House 1" was uppermost in the Board's mind in making the order (Birkett, J., at first instance had said that if this were the case he would have held the order to be bad), but in the majority view the enforcement of sales at existing use value was essential to the Board's function of working the development charge scheme. Denning, L.J., in his dissenting judgment, held that the Board and the Minister had exercised their powers towards an unlawful end. The Act of 1947 nowhere penalised sales at above existing use value, so why should the Minister and the Board make it their function to do so.

The landowner in this case has now obtained four judicial constructions of s. 43 of the 1947 Act, but the validity of the Board's action has not been shaken. If this is a fiscal statute, Parliament might have defined the functions of the tax-gathering body—and in particular the sanction against landowners who fail to act in accordance with the spirit of the Act—with greater precision.

Leave to appeal to the House of Lords was given.

B. K. S.

Appeal to Magistrates Against Enforcement Notice

Callingham and Clarke v. Bucks County Council (March 9, 1951). The owners of certain land at Beaconsfield used for the purposes of a public exhibition known as Bekonscot Model Village appealed to the Beaconsfield magistrates against an enforcement notice served on them by the county council requiring the use of the land to be discontinued and the buildings to be removed.

The Court held, on the evidence, that the model village had been in the course of development in 1929 and 1930, and that the present use of the land had been established by August 1, 1929. Further, that the use of the land as a whole had to be considered, not the dates of erection of individual models.

The Acts of 1925 and 1932 did not apply, nor was the development within s. 75 of the Act of 1947. Accordingly, the Court quashed the enforcement notice under s. 23 (4) (*a*), and costs of thirty-five guineas were awarded against the county council.

*Lands Tribunal Decisions**

King v. Bristol Waterworks Co. (Ref. 85/1950, March 14, 1951). This was a claim for compensation for the compulsory acquisition of two fields of pasture land at Chew Magna, Somerset, of total area 17.462 acres. One of the fields was crossed by a public footpath and the other was subject to a right to take cattle across it to adjoining fields. Tithe of £4 14s. 8d. per annum was payable.

The claimant submitted a valuation amounting to £3,620 5s. plus legal and valuer's fees for the sale of the land. This valuation was based on an estimated pre-war rental value of £3 15s. per acre, increased by 33⅓%, capitalised at 29 years' purchase, and increased by 50% for vacant possession; with additions of £62 the agreed value of timber and fishing rights, and £100 for fees and stamp duties which would be incurred on purchase of other property or equivalent re-investment of the capital moneys. The estimated pre-war rental value and the estimated present-day value were supported by evidence of rentals and sales of other lands in the district, but the figures for these sales were challenged having regard to the particular purposes for which the lands had been bought.

The acquiring company submitted a valuation of £2,587 10s. (£150 per acre) based on a rental value of £4 10s. per acre capitalised at 33⅓ years' purchase.

The Tribunal (James L. Milne, Esq., f.r.i.c.s., f.a.i.) considered that the vacant possession value was £165 per acre, totalling £2,880. To this there was to be added the agreed figure of £62 for timber and fishing rights, and valuer's fees, in connection with the acquisition by the company, of £63 16s. 10d.

The item of £100 claimed for fees and stamp duties on the purchase of other property or equivalent re-investment of capital moneys was not allowed, having regard to the fact that the claimant had not farmed the land himself but had obtained possession before the date of the notice to treat, and the vacant possession value, which would be reflected in the compensation, could otherwise only have been obtained by the owner selling the land and incurring the costs of re-investing the capital money.

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* Full reports of these cases will be published in the *Planning and Compensation Reports*.

The total compensation payable was accordingly assessed at £3,005 16s. 10d.

Mapstone v. Bristol Waterworks Co. (Ref. 50/1950, March 14, 1951). This was a claim for compensation for the compulsory acquisition of Denny House Farm, Chew Magna, Somerset, comprising a farm-house, farm buildings, cottage, and 102.606 acres of land.

The claimant submitted a valuation of £18,070 in respect of the land and buildings, £1,219 6s. 5d. for timber, tillages, etc., and costs of removal, and £397 5s. 6d. for legal fees, stamp duty, and valuer's fees in connection with the purchase by the claimant of another farm, totalling £19,686 11s. 11d.

The acquiring company submitted a valuation of £11,004 for the land and buildings, and £1,219 6s. 5d. for timber, tillages, etc., and costs of removal, totalling £12,223 6s. 5d.

In respect of the main unit of land and buildings (87.023 acres) the claimant's figure was £14,986, based on the pre-war rental of £3 1s. 6d. per acre of the adjoining Denny Farm, with additions and deductions, and increase of 33⅓% to give a net rental value of £336, and capitalisation at 29 years' purchase, and further increase of 55% for vacant possession. The company's figure of £8,904 for this land was the average of three valuations, two based on an estimated net rental value of £225 and the third on a comparison with the sale price of the neighbouring Breach Hill Farm.

The Tribunal (JAMES L. MILNE, ESQ., F.R.I.C.S., F.A.I.) having regard to the valuations and other evidence submitted by the parties, valued the main unit of land and buildings at £11,500 and the other land at £750 (4.822 acres) and £1,675 (10.761 acres).

The claims for £337 11s. 0d. for legal fees and stamp duty and £59 14s. 6d. for valuer's fees incurred by the claimant in purchasing a new farm, were disputed by the acquiring company. Having regard, however, to rule (6) of s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919, and the facts that the claimant had, by re-establishing himself on another farm, mitigated the claim he would otherwise have had for disturbance, and the expenses now in question had been incurred in so doing, the Tribunal decided to award the legal costs, stamp duty, and valuer's fees necessarily incurred in buying a farm similar to that acquired. The figure of £337 11s. 0d. for legal fees and stamp duty was accordingly approved, and an amount of £25 for valuer's fees.

It had been agreed by the parties that the claimant should receive valuer's fees in connection with the acquisition by the company, and these were determined at £231 5s. 3d. Including also the agreed figures in respect of timber, tillages, and cost of removal, the total compensation was accordingly determined to be £15,738 2s. 8d.

Hayllar v. H.M. Postmaster-General (Ref. 82/1950, April 5, 1951). This was a claim for compensation for the compulsory acquisition of a plot of land 924 sq. ft. in area, on which were the remains of a war-damaged building, situated at Rushey Green, Catford, London. Notice to treat was served on November 11, 1949.

The claimant, who in May, 1949, had received an offer for a lease of the premises for 14 years with lessee's option to determine at 7 years at a rent of £450, claimed £5,773.

The Tribunal (Sir WM. FITZGERALD, K.C., and CECIL H. BAILEY, ESQ., B.SC., M.I.C.E., F.R.I.C.S.) adopted the rental value of £450 and 20 years' purchase, making the capital value of the premises when reinstated £9,000. From this there was to be deducted the cost of rebuilding, for which on the evidence a figure of £5,000 was adopted, leaving an amount of £4,000. To allow for the notional lease under s. 52, this was deferred 4 years, giving a value of £3,292 to which was added £670 as the value of the rent, taken as £200 p.a. for 4 years.

The compensation was accordingly assessed at £3,292 plus £670, *viz.* £3,962.

Kemp v. Middlesex County Council (Ref. 43/1950, April 5, 1951). This was a claim for compensation for the compulsory acquisition of a mansion house known as Wykeham Rise, Totteridge Lane, Herts, together with two cottages and grounds and buildings comprising 23.477 acres, and the saleable timber thereon and also a row of four other cottages. Notice to treat was served on October 20, 1949.

The claimant submitted a spot valuation of £16,320, and a valuation on the residual method totalling £15,500 (net present value of mansion £5,700) plus in each case £1,000 for the row of four cottages. The comparable valuation submitted by the District Valuer amounted to £5,450 (net present value of mansion £2,200).

The Tribunal (Sir WM. FITZGERALD, K.C., and J. P. C. DONE, ESQ., F.R.I.C.S.) felt that evidence given on behalf of the claimant of sales of other properties was not directly relevant to this case owing to differences in the properties, but indicated a vigorous market for good residential property in the neighbourhood. An offer by a prospective purchaser in 1948 had reached £8,500 and would probably have gone to £9,000, but the house had since suffered severe damage from dry rot which would reduce its value to about £5,500. Having regard to the effect of possible licensing restrictions on rental values and to the notional lease, the Tribunal adopted £5,000 as the value of the mansion house. For the first cottage the claimant's vacant possession valuation of £1,500 was accepted, but reduced to £1,400 owing to the notional lease and necessity for expenditure on improvements. £350 was awarded for the second cottage and £300 (the District Valuer's figure) for the market garden. No special amenity value could be attributed to the 18.75 acres of pasture land since this was already included in the value of the mansion house, and on the basis of a rental of £3 per acre and 30 years' purchase this land was valued at £1,650 less £150 for immediate repairs and tithe redemption. For an office building and site of a Scouts' hut £300 was awarded, and for the timber £820 had been agreed. For the row of four cottages the District Valuer's figure of £750 was adopted.

The Tribunal accordingly awarded compensation of the sum of the foregoing valuations, *viz.* £10,420.

*Notes of Planning Decisions**

Government's Policy for Promoting Decentralisation of Population and Industry from Central London

A company engaged in printing and cutting paper patterns appealed against the refusal of the local planning authority to permit premises to be used for general industrial purposes in an area in central London which the authority proposed to zone for commercial purposes. It was proposed to transfer to the premises a number of machines which were installed at premises in a country town where about twenty persons were employed.

The Minister stated he was aware that the neighbourhood comprised a mixture of residential, commercial and industrial uses and the particular block of property contained both authorised and unauthorised industrial development. Nevertheless he thinks the Council are right in their view that it will be necessary eventually to disentangle this mixture of uses in order to rehabilitate the area.

The Minister, in dismissing the appeal, stated that he could not agree to the establishment of a new non-conforming general industrial use, which would only add to the difficulties of the local planning authority and which, by drawing into London manufacturing processes now carried on outside the influence of metropolitan London, would, in any case, be contrary to the Government's policy for promoting the decentralisation of population and industry from central London.

[By courtesy of the Clerk of the London County Council.]

Use of House as Car Hire Service With One Car Only

The Minister of Local Government and Planning has allowed an appeal against the refusal of Erith Borough Council to permit a house and garage at Belvedere, Kent, to be used for a car hire service employing one car only.

The Minister has come to the conclusion that so long as only one car is employed no change of use of the house occurs which could constitute development within the meaning of the Act.

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* The Managing Editor desires to express his thanks to those who have been kind enough to send to this Journal particulars of planning decisions, and hopes that he will continue to receive particulars of planning decisions which involve points of general interest.

[By courtesy of the Public Relations Officer, Kent County Council.]

Builder's Yard and Manufacture of Breeze Blocks, Near Residential Area

The Minister of Local Government and Planning has partially allowed an appeal against the refusal of Dartford Rural District Council to permit land at Leyton Cross Road, Wilmington, Kent, to be used as a builder's yard and for the manufacture of breeze blocks.

The Minister sees no objection to the continued use of the land as a builder's yard, since such a use is in the nature of a local service industry. He agrees with the Council, however, that the manufacture of breeze blocks is a process which should not be carried on on this site. He therefore permits the use of the land as a builder's yard subject to the condition that no manufacturing shall be carried on there.

[By courtesy of the Public Relations Officer, Kent County Council.]

Continuance of Café and Construction of Car Park

The following is an extract from the letter of the Minister of Town and Country Planning, dated October 28, 1950, allowing an appeal against the refusal of the Hemel Hempstead Rural District Council, following the service of an enforcement notice, to permit the continuance of use of a building as a café and the construction of a car park and access at Watling Street, Flamstead.

Permission was refused by the local authority on the grounds that the café was considered to be undesirable from a planning standpoint and superfluous to the refreshment facilities in the vicinity.

" The Minister notes that the premises were operated as a café from 1924 to 1941, and that the appellant claims that he serves daily about fifteen breakfasts, fifteen dinners and thirty to sixty tea meals. While it may be true that this need could be met by other cafés in the area, the Minister cannot agree that this alone constitutes sufficient planning grounds for dismissing the appeal.

He considers that the appellant's proposals will do no undue harm to the amenity of the neighbourhood, and is satisfied after consultation with the Minister of Transport that there is no serious objection to them on traffic grounds, provided there is satisfactory access to the site.

He has accordingly decided to allow the appeal and grants permission for the retention of the café and for the construction of a car park and access subject to the condition that detailed layout of the car park and the access to the site shall be as may be agreed between the appellant and the local planning authority or in default of agreement as shall be determined by the Minister."

[By courtesy of the County Planning Officer, Hertfordshire County Council.]

Breaking Up of Shopping Frontage by a Light Industrial Use

In an appeal against the refusal of the local planning authority to permit the continued use of a shop in a north London borough for the manufacture of ice-cream, and the retail sale of some of the ice-cream from a large serving hatch open to the pavement, the local planning authority contended that this was a light industrial use which was inappropriate in a shopping area; that there was an increased demand for shopping facilities and that the shopping area of which the appeal premises formed part should be reserved exclusively for retail traders.

The Minister stated that he was satisfied that the appellant had made a material change in the use of the premises from their previous use as a shop, such as involved development for which permission was required, and that the predominant use of the premises for the manufacture of ice-cream fell within Class III of the Schedule to the Town and Country Planning (Use Classes) Order, 1950. It did not necessarily follow that any light industrial use should be permitted in a shopping area, and the Minister supported the authority in its contention that it is desirable to avoid any breaks in the continuity of shopping frontages caused by the intrusion of industrial users or warehouses used for wholesale trade; and, in the circumstances, he considered that the use of the premises should revert to that of a retail shop, but granted permission for a short period to enable the appellant to find alternative accommodation.

[By courtesy of the Clerk of the London County Council.]

Condition as to Use Where Existing Permission in Principle

The Minister of Local Government and Planning has announced his decision on an appeal against conditions imposed by Orpington Urban District Council when permitting the conversion of disused farm buildings at Cudham, Kent, into a youth hostel. The conditions were that the premises should be used purely as a youth hostel in accordance with the regulations and general rules of the Youth Hostels Association, and that no direct access should be made from Cudham Lane.

As permission in principle for the premises to be used as a youth hostel had previously been granted, the Minister considers that it was not open to the Council to place any limitation on that use of the premises. He has, therefore, allowed the appeal against the first condition.

The Minister considers that the proposed access to Cudham Lane would cause unnecessary risk to hostel visitors and other users of that road. He has, therefore, dismissed the appeal against the second condition.

[By courtesy of the Public Relations Officer, Kent County Council.]

Tree Preservation Order—Special Amenity Certificate

The following is an extract from a letter of the Minister of Town and Country Planning following an appeal against a decision given by the Somerset County Council on May 2, 1950, to refuse permission to fell the woodland areas at East Quantoxhead. The application for permission has been made under a current Tree Preservation Order, and in refusing permission the Council certified under paragraph 6 (*d*) of the Order that there was a " special amenity served by the woodland other than amenity in relation to the woodland area ". The effect of this, if upheld, would be to preclude the payment of compensation in respect of damage suffered or expenditure incurred in consequence of the refusal.

" The Minister is satisfied that the woodlands in question, which were, no doubt, planted early in the last century to provide timber and other products for estate purposes, have now acquired a high amenity value, which public opinion would generally wish, and rightly, to see preserved or increased. While clear felling, if replanting and maintenance were suitably carried out, might ultimately produce the desired result, the operation would effectively spoil the amenity of the place for a long time. On the other hand, a mere prohibition of all felling for an indefinite period would do nothing to arrest the decay of the woodlands, in the absence of suitable conditions for natural regeneration.

The Minister is in agreement with the view expressed on behalf of the Council that the future management of the woodlands should place amenity as the primary object, and that in the circumstances the course most likely to make this possible is to refuse the present application for permission. If, in the future, the proper management of the woodlands justifies the felling of some of the trees, as a preliminary to restocking, the Council will, no doubt, be prepared to give full weight to the circumstances in considering any further application that may be made to them.

The question whether the case is one in which it would be proper to allow the certificate which is the subject of appeal, should in the Minister's view be considered in the light of the general intentions in regard to the payment of compensation explained in paragraphs 42 to 45 of the Memorandum on the Preservation of Trees and Woodlands issued by this department. In general, woodlands are primarily a timber crop from which the owner is entitled to benefit, and it is not intended that a person should be precluded from making a claim in respect of damage suffered or expense incurred on account of a refusal of permission to fell, unless felling would amount to a misuse or destruction of the proper functions of trees so serious as to offend the public interest. The woodlands were originally planted for utility, and the fact that they have now acquired an amenity value so great that it is reasonable to control the way in which they are treated, does not in the Minister's view justify the assumption that the present proposal amounts to misuse or destruction of the kind contemplated in the Memorandum, and the Minister considers that the granting of a certificate which had the effect of precluding the making of a claim in this case would impose unreasonable hardship.

The Minister therefore dismisses the appeal in regard to the application for permission to fell, and allows the appeal regarding the certificate issued by the Somerset County Council dated May 22, 1950, which accordingly shall be of no effect."

[By courtesy of the Clerk of the Somerset County Council.]

Practical Points

All questions for consideration should be addressed to " The Managing Editor, The Journal of Planning Law, 3 Chancery Lane, London, W.C.2." The questions of subscribers only are answerable in the Journal. All questions should be submitted in duplicate. The Publishers cannot accept any responsibility for the correctness of replies.

298. *Claim for loss of development value—shop window.* ([1951] *J. P. L.* 250.)

Supplemental Answer

I must amend the answer to Point No. 298. The proposed alteration to the shop is one for which planning permission would probably be required, but it is, of course, within para. 3 of the Third Schedule and so exempt from development charge. Further, no claim could be sustained under Part VI. [W. A. L.]

303. *Claim on £300 million fund—deduction for injurious affection.*

A claim for loss of development value has been duly made and accepted in respect of a piece of land owned absolutely by a person who, under the terms of a will, is in occupation as a life tenant of an adjoining property consisting of a considerably larger area of land with dwelling-house of appreciable size. This adjoining land with dwelling-house is vested in the trustees of the will as trustees for sale (as being an authorised investment) and is thus not settled land as such.

The amount of the development value in respect of the piece of land has been agreed between the surveyors concerned and the district valuer, but upon the latter having raised the subject of injurious affection to the adjoining property the Central Land Board put forward the view that a deduction for injurious affection can legally be made where the property injuriously affected is held by the claimant as tenant for life whilst the land, the subject of the claim, is held in beneficial freehold ownership.

Can the contention of the Central Land Board upon the subject be taken to be correct and, if so, upon what grounds, having in mind especially as mentioned above that the property injuriously affected is vested in trustees for sale and not in a tenant for life as settled land? [R. & W.]

ANSWER

The deduction proposed is authorised by s. 61 (6) (*b*) of the 1947 Act. In a case of compulsory acquisition, injurious affection may be claimed notwithstanding that the lands taken and those retained and injured are held under different titles: *Oppenheimer* v. *Minister of Transport*, [1942] 1 K. B. 242, in which the claimant owned a house but had only an option to purchase the lands taken. The injurious affection must be limited to that which the tenant for life would suffer. [W. A. L.]

304. *Compulsory purchase—acquisition of streets.*

A compulsory purchase order affecting an area which was totally destroyed by enemy action has recently been confirmed by the Minister and notices to treat are shortly to be despatched to about 100 persons concerned. The idea behind the Council's move is to purchase the whole of the affected land and then to erect flats or other buildings upon it.

Crossing the area affected are several streets which now cease to have any purpose and, in fact, if the present plans of the Council proceed certain flats will actually be built, in part, over the sites of these roadways.

We are rather puzzled to know how the ownership of these roadways can be acquired by the Council, and the mode of procedure. We imagine that the roadways have been in existence for perhaps 100 years and they are not county roads. It is proposed that, when the sites of properties fronting on the roads are conveyed to the Council, to include in the conveyance all the estate and interest of the vendor, if any, in the roadway fronting the property, but we hardly imagine that this disposes of the point. We shall be grateful to have your advice and assistance on the correct procedure to follow. [T. C.]

ANSWER

The surface of these highways will already be vested in them *qua* highway authority; the subsoil will be acquired by virtue of the acquisition of the adjoining properties (*ad medium filum* in each case).[1] Power to stop up or divert the highways is given by s. 23 of the Town and Country Planning Act, 1944, as re-enacted by the Act of 1947, Sched. XI (and see s. 19 thereof and s. 38 of the 1947 Act, under which the property is presumably being acquired). [J. F. G.]

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[1] Reference may also be made to *Urban Estate Management*, by W. A. Leach, p. 650, additional note to p. 134.

305. *Development charge*—10 *per cent. tolerance on additional buildings.*

It appears that district valuers are interpreting the provisions of exemptions 1 (*a*), 3 and 4 in the Schedule to the Town and Country Planning (Development Charge Exemptions) Regulations, 1950, as follows :

Where additional buildings have been erected within the curtilage of an existing undertaking and the tolerance allowance on the existing buildings has been exhausted in arriving at the development charge to be paid on that portion of the new building in excess of the tolerance, then on any new building or extension no further tolerance can be allowed in respect of that portion of the previous additional building on which development charge has been paid : but, if a new building were erected, on a separate site, not within the curtilage of the undertaking, then, when such new building is extended, a 10 per cent. tolerance would be allowed on the cube of such building.

Is this interpretation correct?

It seems illogical, that, where two new buildings are erected, one within an existing curtilage and the other on a new site, and a development charge has been paid in respect of each, that when it comes to an extension 10 per cent. tolerance is allowed in one case but not in the other, merely because one happens to be within the curtilage of an existing undertaking and the other on a separate site. In each case the new building was erected after the appointed day. [W. J. A.]

ANSWER

Paragraph 1 (*a*) of the Development Charge Exemptions Regulations (SI 1950, No. 1233) provides that each and every " additional building " erected in a curtilage is to be deemed to be an enlargement of the " original building ". Presumably an " original building " is the building or buildings existing on the appointed day or the first subsequent development of a building or buildings other than " substituted buildings " (para. 1, Third Sched., and para. 1 (*b*) of Exemptions Regulations). Presumably, also, an "additional building " is a separate structure and not an excrescence upon an existing building (see also s. 112 (2) of the Act).

It follows from para. 1 (*a*) of the Regulations that, if in the curtilage of building A an additional building B is erected, B is an enlargement of A. Similarly, a further building, C, would also be an enlargement of building A. Applying para. 1 (2) or (4) as appropriate, A has already been enlarged by B which has probably used up the whole of the tolerance due to A; but B itself has not been enlarged even by building C (which is, by virtue of para. 1 (*a*), a further enlargement of A). There is nothing to exclude from para. 1 (4) the enlargement of building B by an excrescence. The enlargement is not an "additional building" in the sense of para. 1 (*a*), the provisions of which accordingly have no application to the enlargement, and the tolerance of para. 1 (4) is, in my opinion, enjoyable by building B (and building C, etc.). [W. A. L.]

306. *Development charge—measurement of cubic capacity.*

We are extending our office by the building of two rooms at the rear, and they must, by reason of lack of timber if for no other reason, have a flat roof.

The cubic content of the new building measured externally and taking the height from the ground floor to the top of the flat roof would only be very slightly over the 10 per cent. tolerance allowed by the Act, but the district valuer contends that the cubic capacity must be measured by taking the height as two feet above the flat roof level, quoting in support of his contention the PRACTICE NOTES, First Series, Appendix A.

We do not know why the responsible bodies who appear to have agreed this code have agreed to the addition of a fictitious two feet above roof level, but it does not appear to us that we are bound by those PRACTICE NOTES. The statutory provision in the Act merely states cubic content of the building and s. 112 (3) of the Act merely states that that must be ascertained by external measurement.

It now appears to us that when the Act has specifically stated how measurements are to be taken, it is not open to the district valuer, or anyone else, to adopt another method, and the method clearly stated is by external measurement. [A. C. D. & S.]

ANSWER

The code of measurement in the PRACTICE NOTES is not binding but is an endeavour to secure a measure of uniformity.

For example, if a building has a flat roof with parapets 3 feet high on all sides, should the height be measured to the top of the parapets? If there are three parapets and one open side or two parapets and two open sides how should the measurement be taken?

It is possible that one should measure to roof level and add the number of cubic feet in the brickwork of the parapets; also that beneath the building the cube should be taken to the underside of the oversite concrete and the actual cubic feet in footings and foundations added, in which case it might be that drains and manholes should be added as part of the building.

There has long been a more or less recognised code for cubing buildings which architects and surveyors use to arrive at a basis for cost comparison, and the code of measurement in PRACTICE NOTES is a modification of this older code. If the code is not accepted, the Board may take the view that it is for the developer to take steps to show that they are not entitled under the vague general words of the Act to adopt a system of measurement so closely conforming with a normal practice of measurement. [W. A. L.]

307. *Enforcement notice—cancellation of entry in Local Land Charges Register.*

Should an entry made in the Local Land Charges Register of an enforcement notice served under s. 23 of the Town and Country Planning Act, 1947, be cancelled when the notice has been complied with, or does the notice continue for all time to prohibit the use therein mentioned? [T. C. I.]

ANSWER

By r. 13 (2) of the Local Land Charges Rules, 1934, when a charge other than a " general charge " has " been discharged or become unenforceable " the entry in the register should thereupon be cancelled. If the enforcement notice requires the demolition or alteration of a building or works, or the execution on the land of any building or other operations, it is reasonably clear that when such work has been carried out, the force of the notice will be spent, and the entry should be cancelled.

Where the notice requires discontinuance of a use, or a compliance with conditions (in cases not involving execution of works, etc.) the position is by no means clear. The resumption of a use which has been discontinued in compliance with an enforcement notice is not only contravening development, but also constitutes an offence against s. 24 (3); it is admitted that the notice can only require the discontinuance of a specified use, not in so many words prohibit its resumption, and that to constitute an offence against s. 24 (3), the use must be carried out " in contravention of the notice ", but it is submitted that the notice must have the effect of prohibiting resumption of the forbidden use; otherwise the penal provisions of s. 24 (3) could be rendered useless in practice. It is submitted then, that such an enforcement notice should remain on the register indefinitely—until withdrawn at the request of the local planning authority. [J. F. G.]

308. *Near ripe land—liability of vendors under method " B " of " House 1 ".*

We are making preparations for sales of plots of land by our clients in which we shall be taking advantage of a near ripe ration. It is proposed to sell the land under method " B " of Pamphlet House 1. Our clients will, therefore, make themselves responsible for development charge. Our problem is for how long they will be responsible. It appears that some limit, say twelve years, should be set to the time within which they may be called upon to pay the charge. Otherwise they may be put into the position of having to set aside a fund in perpetuity to meet charges on undeveloped land.

We wish, of course, to be sure of satisfying the requirements of the Central Land Board in order to keep the benefit of the near ripe ration, and shall be pleased to hear whether a limited consent as suggested above would be satisfactory. [W. H. & G. M. Q.]

ANSWER

Method " B " of House 1 is applicable only where the land is to be sold for immediate development—it is a pre-requisite that the development charge should have been assessed before sale, and the Central Land Board invariably reserve the right to review the position if development is not carried out within a specified time (usually twelve months). The vendor's position should be protected by an appropriate clause in the contract for sale. [J. F. G.]

THE JOURNAL of PLANNING LAW

Published by

SWEET & MAXWELL, LIMITED
2 & 3 CHANCERY LANE, W.C.2

On the First of Every Month
Subscription: £1 10s. 0d.

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"*Planning Law*" *Notes*

On June 30, 1951, we reach the end of the third year since the "appointed day" on which the Town and Country Planning Act, 1947, came into operation.

The date has a special significance under several of the provisions of the Act.

(a) Under s. 5 (1) local planning authorities are under a duty to submit development plans to the Minister by this date, unless the period is extended by the Minister in any particular case.

(b) Under s. 75 (1), it is the last date for service of an enforcement notice in respect of "existing contravening development".

(c) Under s. 81 and the Minerals Regulations, 1948 (SI 1521), it is the end of the period of exemption of mineral workings from development charge, with corresponding adjustment of claims on the £300 million fund.

(d) Under s. 85 (5), it is the last date for application to the Minister for a direction that land held on charitable trusts on July 1, 1948, but which was not itself used on that day for charitable purposes, should be treated as land to which s. 85 applies.

The "Progress Report" by the Minister of Local Government and Planning on the work of the Ministry of Town and Country Planning, 1943–1951, which has been presented to Parliament and published (Cmd. 8204, H.M.S.O. 5s.) has aroused considerable interest and has evidently been eagerly scanned for any hints as to future government policy. One newspaper at least, under a heading "Planning Act 'tax' to go?" seized upon the passage that

> "Parts VI and VII were included in the Act in an effort to provide some equity in the operation of the earlier Parts, as between persons to whom planning permission is granted, and persons to whom it is refused. *If public opinion no longer thought it necessary to compensate for refusal, great simplifications would be possible*",

as a hint that the Government is "flirting with the idea of making drastic changes" in the Act of 1947.

A leading article in *The Times*, commenting upon the report, also looks to the future as well as at the past, and refers to the "compensation and betterment" provisions of Parts VI and VII as "a scheme which threatens to become the main stumbling block of the whole planning system".

The opening of the house of the late Mr. G. B. Shaw to the public, by the National Trust, has raised the question whether this was a material change of use for which planning permission should have been obtained. The Trust have issued a statement to the effect that they do not consider that such permission is necessary, but the reason given—that they are under a statutory obligation to hold such properties for the benefit of the nation, and that it would be contrary to common sense if a local planning authority had power to stop the Trust carrying out its duty to the public—may not be thought by lawyers to be a sufficient reason in law. The Trust consider, however, that "if the public were to be denied access while a technical point under the Town Planning Act was argued, they would indeed be open to criticism".

Circular No. 92 of the Ministry of Town and Country Planning—"Reproduction of Survey and Development Plan Maps"—which is dated January 27, 1951, but has only recently become available, is of unusual form. The circular itself comprises two foolscap pages. There follows Appendix I, extending to a further ten pages, which is an alphabetical index of letters used in the revised notation for survey and development plan maps. Appendix II—"Revised Notation for Survey and Development Plan Maps"—consisting of nineteen loose sheets, and Appendix III, "Illustrations" (with specimen maps), a further four sheets, are contained in a pocket at the back. The price is 4s. 6d.

In the preliminary draft of the mineral workings near ripe scheme which has now been published (see p. 348, *post*), the date fixed for the issue of stock under the Part VI, £300 million, scheme is defined with delicate humour as the " date of satisfaction ".

The Town and Country Planning (National Coal Board) Regulations, 1951, made under s. 90 of the Town and Country Planning Act, 1947, came into operation on May 1, 1951.

The regulations, which are summarised at p. 340, *post*, give the Coal Board the benefit of some of the arrangements made for statutory undertakers by the 1947 Act, including a right to the payment of compensation on a special basis if the development of certain of their land is hindered by planning restrictions. They also contain a new formula for the assessment of compensation in cases where the working of coal underground is affected.

Dr. Potter contributes the following: A question of some difficulty has arisen concerning assignments of claims for loss of development value. Where the assignment is contained in a conveyance of the land itself, a common practice, and the conveyance is included in a deposit of title deeds, the problem is whether or not the deposit operates as a charge on the claim so assigned and, if so, whether notice should be given to the Central Land Board. We think that it is clear on general principle that as the assignment of the claim is contained in the conveyance the deposit of the title deed does operate as a charge on the claim as well as on the land. It is, of course, only an equitable charge of a chose in action and it is, therefore, necessary that notice be given to the Central Land Board to preserve priority under the rule in *Dearle* v. *Hall*. It is understood that the Central Land Board are prepared to accept such notice.

If the deposit is accompanied by a memorandum and the memorandum includes a description of the property charged it is clearly desirable, and may be necessary, specifically to refer to the claim assigned. This claim exists independently of the land as a chose in action and failure to mention it may be construed to exclude it from the operation of the charge.

A limited number of copies of the Development Plan for the County Borough of Tynemouth is now available for purchase in the form of a Written Statement, Town Map and Programme Map at an inclusive price of £1 1s. 0d. and may be obtained from the Borough Surveyor, Mr. D. M. O'Herlihy, B.SC.(Eng.), M.I.C.E., 16 Northumberland Square, North Shields, Northumberland.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Journal. They should be sent to the MANAGING EDITOR, *Journal of Planning Law*, 3 CHANCERY LANE, LONDON, W.C.2. *Every attempt will be made to return drafts or unsuitable copy but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

Some Reflections on Enforcement Procedure

By Ronald P. Crompton, M.A. (Oxon), L.A.M.T.P.I.,
Deputy Town Clerk of the Borough of Middleton

It is an appropriate time to reflect on the many aspects of enforcement procedure under the Town and Country Planning Act, 1947, in view of the fact that June 30, 1951, is the last day of the three-year period under s. 75 of the Act for the serving of enforcement notices in respect of unauthorised uses and works in existence at the appointed day.

This period has seen the solution of many problems. The "hole in s. 23 of the Act" recognised by the Minister in Circular No. 69, paragraph 7, has been stopped effectively by s. 2 of the Town and Country Planning (Amendment) Act, 1951, and the conditional consents can now safely be given for a period exceeding three years three hundred and sixty-four days. In *Higham* v. *Havant and Waterloo Urban District Council* (1950), 1 P. & C. R. 281, following the Quarter Sessions decision of *Kendall* v. *Robinson* (1950) 1 P. & C. R. 211, it was held that an enforcement notice in respect of a contravention of previous planning control could be served within the three years allowed in s. 75 of the Act although the period of four years from the beginning of the development specified in s. 23 of that Act had expired. Despite this activity of the legislature and the Courts the law relating to enforcement is not free from complexities and certain points are interesting and worth attention.

Appeals decisions outstanding on July 1, 1951.

It is possible that quite recently a planning application has been made in respect of a contravening use or building in existence, or erected, before the appointed day. The decision may have been against the applicant and the appeal may have been made and the case possibly heard before an Inspector of the Minister. If the decision of the Minister is not known by June 30, 1951 (or earlier for administrative convenience) a curious position arises. If the notice is not served within the three years the rights of enforcement lapse and if the Minister subsequently refuses to allow the appeal the applicant can continue the use or retain the building in the happy knowledge that no enforcement is possible. On the other hand an enforcement notice should not be served whilst the matter is *sub judice* in the hands of the Minister. In a perfect world the local planning authority would always forestall the applicant by serving an enforcement notice well before the end of the three-year period but in practice this is not always possible. The answer of course is for the Minister to " clear his books " of all outstanding cases before the end of the month but here again this may not easily be achieved. It should of course be pointed out that the three-year period does not apply to enforcement under the Building Restrictions (War Time Contraventions) Act, 1946, which deals with development between September 3, 1939, and March 26, 1946.

Enforcement under the Building Restrictions (War Time Contraventions) Act, 1946.

By s. 75 of the 1947 Act the three-year period does not apply and therefore the decision in *Higham* v. *Havant and Waterloo Urban District Council* (*supra*) is inapplicable. *Prima facie* the four-year limitation of s. 23 applies but the position is complicated by s. 4 of the 1946 Act which reads as follows :—

> " 4 (1) Where any works on land carried out, or use of land begun, during the war period remain or continues after the expiration of five years from the end of that period, and no determination has been given under this Act whether the works or use fail to comply with any building law or planning control, the works or use shall by virtue of this section be treated for all purposes as complying therewith unless steps for enforcing the law or control have been begun before the expiration of the said five years."

By reason of this section the law seems to be as follows. In the normal " war period " case (September 3, 1939 to March 26, 1946) enforcement action can be taken before March 26, 1951, and June 30, 1951 has no relevance as the three-year period does not apply. But if a *determination has been given under the* 1946 *Act* s. 4 does not apply and as the three-year period is inapplicable the case seems to be thrown back on s. 23 of the Act and enforcement must be taken within four years of the unauthorised development.

It is quite conceivable that the four years may have elapsed by the date of the determination. As March 26 has now passed this seems to be a point of purely antiquarian interest.

The effectiveness of an enforcement notice.

An enforcement notice is registered as a local land charge. If a notice is served and there is apparent compliance with the notice, it might appear that the usefulness of the notice has lapsed. The better view would appear to be that it should remain on the register and it would be effective if the identical circumstances arose again (notwithstanding Local Land Charges Rules, 1934, rule 13 (2) "where any other local land charge [other than a general charge] has been discharged or become unenforceable the registration shall thereupon be cancelled"). It can readily be seen that there may be a superficial and basically ineffective discontinuance of a use over a short period and if repeated enforcement notices were required the law would be in danger of being brought into contempt. Two points must be considered :—

1. The contravention must be identical. If there are varying circumstances it will be advisable to serve a new notice.
2. If any length of time has elapsed it would in any case be better to serve a new rather than to rely on an old notice although the old notice would be disclosed on a local land charge search by any purchaser.

Enforcement notices in respect of development before and after the appointed day.

In respect of works instituted or uses begun *before* the appointed day an enforcement notice can be served where such development contravenes previous planning control. No contravention occurs where :

(*a*) permission was granted under interim development control or under an operative planning scheme;

(*b*) where the use or building existed before the date of the resolution to prepare a scheme or in the event of no such resolution existing October 22, 1943.

In respect of development *after* the appointed day an enforcement notice can be served where development occurred without permission granted under Part III of the Act or where "any conditions subject to which such permission was granted in respect of any development have not been complied with".

The case may arise where an authorised use exists at the appointed day and subsequently this is changed without planning permission. From a *present permitted use* there is a transition to a *present actual use.* Enforcement procedure can be taken against the present actual use. But if there is a subsequent reversion without permission to the present permitted use or to a use within the permitted range of change from that use, the use at once becomes authorised. On the other hand if planning permission had been obtained for the change to the present actual use, any reversion to the original authorised use without permission might be met by enforcement procedure. It is easy to visualise some of the many problems that may in practice arise.

Suspended enforcement.

The recent decision of the Minister of Town and Country Planning (see *Times*, May 7, 1951, p. 2) that Briar Patch, the bungalow built by Mr. L. A. Kirby without the permission of the Easthampstead Rural District Council, Berkshire, shall be given a three years' grace raises certain interesting points.

It appears that the Minister in this case is not merely exercising his right to grant or refuse permission or grant subject to conditions, but is controlling the enforcement rights over a given period—in essence suspending enforcement. No doubt the borderline between a temporary consent and a suspended refusal is very narrow but it is respectfully suggested that there is a distinction between the two (especially where the period of concession is short) and it is in the best interests of planning that this distinction should be observed.

Back to Earth

Some Further Reflections upon Contravening Use and Development Charges

By J. F. TURING, Solicitor

Some years after the publication of T. E. Lawrence's *Seven Pillars of Wisdom*, King Abdullah of Trans-Jordan was invited to comment upon the author's uncomplimentary references to him in that unusual work. He is said to have replied: "Lawrence heaped much sand upon my head, but the winds of time have blown it away". It is to be hoped that the winds of time will also blow away some current metaphysical speculations upon the true nature of development charge.

Dr. Potter has stated my case very fairly at [1951] J. P. L. 280/283, but he is too kind in describing me as a "learned" correspondent; large chunks of the instructive matter contained in this Journal are usually beyond my comprehension. I reject as unworthy the thought that I may not be alone in this: to other subscribers, no doubt, the mental gymnastics exacted by the Act come readily enough.

As I say, Dr. Potter has put the case very fairly, but it has inevitably become a little tangled up in the web of his reply. By the courtesy of the editors, I therefore restate the case in the simplest possible terms, adding a few comments upon some views lately expressed by Mr. Leach.

Development charge.

Briefly and broadly, development charge represents the difference in value of the land with and without the benefit of planning permission (s. 70 (2)). A use which has continued so long that it is safely "in baulk" and beyond the reach of an enforcement notice is in effect a "permitted" use, since planning permission for its continuance is no longer a practical necessity (s. 23 (1) of the 1947 Act as amended by s. 2 of the 1951 Act). Therefore in such a case the value of the land with or without planning permission is for all practical purposes the same. Therefore no development charge is possible; there is no basis of assessment.

Mr. Leach evidently had the same point in mind when he wrote (at [1951] J. P. L. 28) that "if there is no permission, there is no basis for assessing the charge, so that if the time for serving an enforcement notice has passed it may be that the liability to charge is ended". This proposition, though somewhat less categorical than mine, appeared in the January issue, immediately following Dr. Potter's original article in the December issue suggesting the contrary ([1950] J. P. L. 881). What are we to do when our experts differ? The practical difficulties of assessment are such that I think Mr. Leach must be right in this matter: once we have arrived at the conclusion that there is no basis of assessment, it seems to follow that there cannot be a development charge.

Penal development charge.

I agree with Dr. Potter that s. 74 presents some difficulties of interpretation, but there appears to be nothing very difficult about the statement in sub-s. (3) to the effect that the penal development charge is not to exceed twice the amount of the development charge. "The Central Land Board may . . . include in the amount of the development charge . . . such additional sum by way of penalty as they consider appropriate, not exceeding twice the amount of the development charge determined as aforesaid. . . ." Twice nil is nil; even the Central Land Board should not be able to escape the tyranny of this simple arithmetic.

"Lawful" and "unlawful" use.

I deplore the employment of these terms in the sense of uses which respectively conform and fail to conform to planning control. A use which is a "lawful" use in the sense that it conforms to planning control (either because planning permission has been granted or because none is required) may be unlawful in the ordinary sense of the term, *e.g.*, a permitted factory used in such a manner as to create a public nuisance or a permitted warehouse used for stolen goods. Conversely an innocent use, invading no public or private right, such as the use of a meadow as a playing field, may contravene planning control and in this very limited sense may be regarded as "unlawful" but in the ordinary sense of the term—whether legal or lay—it is "lawful", and perhaps the more so when contravention cannot be prevented.

A large amount of confusion arises from this source. For instance, is a use of four years' standing, which has thus reached beyond any enforcement notice, " lawful " or is it " unlawful "? At p. 281 of the May issue, Dr. Potter describes it as " lawful but not permitted ". Then at p. 282, where he is developing his argument concerning the alternative remedy of injunction, he says that " the point of the injunction . . . would simply be to prevent the continuance of *unlawful* use ", (his italics).

I suggest that it might be convenient to drop these offending terms and to divide uses into the three following classes:

(*a*) permitted uses;
(*b*) contravening uses; and
(*c*) possessory uses.

The first class would cover both uses for which permission had been granted and uses for which no permission was required. The third class—so named by analogy with " possessory title "—would cover uses which had outrun an enforcement notice and could no longer be stopped by that means. As to whether they could be stopped by injunction is a matter now to be considered.

Injunction as an alternative to an enforcement notice.

We are certainly getting into deep waters here, but it seems to be very questionable whether the Court would allow the process of injunction to be used as an indirect means of enforcing planning control. If the Court were to admit such a remedy, the process would be coming very near to overriding the Legislature, which has placed a time limit on enforcement notices.

Secondly, injunction is an equitable remedy and demands amongst other things at least some promptness on the part of the plaintiff. *Vigilantibus, non dormientibus, lex succurrit.* Had the plaintiff planning authority not allowed some four years to elapse, it is plain that it would be open to them to use the very much simpler remedy of an enforcement notice. Is there any reason why equity should aid them by injunction?

Finally it is by no means clear that a mere breach of planning control is a matter which can give rise to the equitable remedy of injunction, though this is difficult and requires detailed examination.

Dr. Potter suggests at [1950] J. P. L. 882 that " an invalid use bears a marked resemblance to nuisance ". Now what does this mean? " A marked resemblance to nuisance " is not actionable of itself. The law reports are strewn with the metaphorical corpses of unsuccessful plaintiffs who have sought to prove the contrary : see *Bradford Corporation* v. *Pickles*, [1895] A. C. 587 and other cases cited in *Halsbury*, 2nd ed., vol. 24, p. 24, n. (*h*), from burning weeds to decoy ducks.

If we substitute " nuisance " for " a marked resemblance to nuisance ", then we must decide whether breach of planning control is a private, statutory or public nuisance.

As to private nuisance, it is difficult to see how the planning authority could establish any infringement of a proprietary right—except possibly the vested interest of the Crown in development values—nor having established it, how the authority could prove special damage over and above that inflicted upon the community at large.

Of statutory nuisance there appears to be no evidence whatever.

As to public nuisance, presumably action would have to be taken, if at all, and the suit instituted by the Attorney-General, which suggests that perhaps the subsequent waiver or relaxation of the injunction would not be competent to the local authority.

But, so far as I can judge, there is little in the decided authorities to support Dr. Potter's view that breach of planning control (*i.e.*, by continuance of a so-called " contravening " use) is a nuisance of any kind or *in pari materia.* He quotes *Stevens* v. *Chown*, [1901] 1 Ch. 894 and *Fraser* v. *Fear* (1912), 107 L. T. 423. Both these cases concerned Acts of Parliament. In the first case the plaintiff's remedies existed prior to and independently of the Act and were left undisturbed; they did not rest upon the Act alone. In the second case, certain prohibitions contained in the Salmon Fisheries Acts of 1861 and 1873 were held to oust the plaintiff from other remedies, so that the case is against the view that there is an alternative remedy open to a planning authority by way of injunction.

The House of Lords' decision in *Institute of Patent Agents* v. *Lockwood*, [1894] A. C. 347 seems to be a little closer to our problem because it concerned a new penalty introduced by Act of Parliament. At pp. 361–362 Lord Herschell, L.C., had some hard things to say about alternative remedies :—

> " You have here for the first time a new offence created —the offence of practising as a patent agent without being on the register . . . ".

[Here we have only to substitute a mental reference to the new " offence " of using property without planning permission for that use.]

> " But for the enactment creating that offence, the defender has done nothing of which anybody would have a legal right to complain either civilly or criminally. The Legislature, having created that new offence, has prescribed the punishment for it, namely a penalty of £20. Can it possibly under these circumstances be open to bring the individual . . . before the Court of Session with its attendant expense and to ask the Court of Session to make a declaration that he has been breaking the law . . . and then . . . to ask the Court of Session to interdict him, with this result, that if he were to offend again he would not be subject to the summary procedure and the £20 penalty but would be liable to imprisonment for breach of the interdict? . . . . The mode of procedure and the amount of penalty are often regarded by the Legislature as of the utmost importance when they are creating new offences, and the law would, I believe, contrary to their intention, be most seriously modified if it were held that the party committing a breach of *that which for the first time is made an offence*, were to subject himself by so doing to proceedings of this description, which might result in a committal to prison."

It is true that what we have to consider here is not precisely an offence involving a penalty, but the principle remains the same. The Legislature has thought fit to provide the remedy of an enforcement notice; the development charge and penal development charge are the sanction or penalty that lie behind it. There appears to be much cogency in the argument that the alternative remedy of injunction goes far beyond the limits prescribed by the Legislature and might culminate in penalties which were never intended.

Further, it is open to question whether an injunction would produce the result which the planning authority may be presumed to desire. Dr. Potter gives us the analogy of an order for possession, which does not prevent the plaintiff from selling the land forthwith to the defendant. But an order for possession is a private matter between the parties and in any case carries no implication that the plaintiff must for ever thereafter continue in possession. An injunction obtained by the Attorney-General, grounded upon public nuisance, might result very differently; one may ask whether it is open to a local authority, *suo motu*, to relax or waive the order by a later planning permission. I will not attempt to examine the hideous possibilities. If there is ever a defendant in this situation he may be emboldened to serve a purchase notice upon the authority claiming that their refusal of planning permission has rendered the land " incapable of reasonably beneficial use " under s. 19 of the Act !

Development Charge Again Reconsidered

Refusal value.

It is grievous when our most cherished convictions lie rudely shattered by some new analysis. Now we have Mr. Leach, in his most interesting article, " The Theory of Development Charge Reconsidered " ([1951] J. P. L. at p. 261) telling us that " refusal value " is a complete misnomer. Mr. Leach claims to detect a difference between " the permission " and " the benefit of the permission " and tells us that the phrase " without the benefit of the permission " does not justify a valuation upon the footing that permission would be refused. If I follow him, he is saying that it does not mean that, because by the time you get round to the development charge stage, the permission is an accomplished fact; and (to quote his article) this fact " sustains the value for the existing use, for those who wish to develop know that they can secure the benefit of the permission by paying the development charge and will be prepared to bid ".

Let us hope that some report from Barsetshire will reveal whether the District Valuer in that county is a convert to this new gospel. He has always impressed me as an obstinate fellow ; I shall be disappointed in him if he does not take it for a sad heresy. For if the phrase " without the benefit of such permission " in sub-s. (2) of s. 70 means anything at all, surely it must cover every type of benefit : it would be illogical to include some benefits and to exclude others. Now Mr. Leach has discerned two benefits, one patent and one latent, as follows :—

(*a*) the patent benefit of being able to proceed with the permitted development upon payment of the development charge ;

(*b*) the latent benefit of the permission itself, implicit in the knowledge that permission cannot now be refused —a factor which, as he rightly indicates, may be of some solace to prospective purchasers.

For some reason which eludes me, Mr. Leach allows that the first of these benefits is a " benefit of the permission " but contends that the second is not.

According to his theory the second should be added to the refusal value, thus as he puts it " sustaining " the value of the land for its existing use. I should have supposed that the effect was rather to *enhance* the value than to sustain it, but let that pass : what we may find difficult to sustain is the artificial distinction between one type of benefit and the other. The granting of the permission is in and of itself a benefit and reminds one of the poet who " was himself his own fever and pain ". You cannot divorce the permission from the benefits—it is a chicken and egg problem.

In brief, I suggest we were right all along—and so were the Central Land Board—in the term " refusal value " and all that it implies. For the purpose of assessing the lower figure for development charge it *should* be assumed that permission would be refused. I send this as a message of good cheer to the Barchester Valuation Office.

Progress of Development Plans

(*Continued from pp.* 229, 288, *ante*)

Again there is, as at May 18, 1951, no further progress to report under this heading.

Under s. 5 of the Town and Country Planning Act, 1947, local authorities are under an obligation to submit development plans not later than July 1, 1951, " or within such extended period as the Minister may in any particular case allow ".

Planning and the Solicitor

By Charles Greenwood, Solicitor

IV—Houses and Flats

My article in the February issue of this Journal in which I dealt (*inter alia*) with the conversion of a house into flats, produced an interesting letter from Messrs. Bryant & Griffiths,[1] Solicitors, of Minehead, with a pretty problem on the construction of the Town and Country Planning (Development Charge Exemptions) Regulations, 1950 (SI 1950, No. 1233). This letter was printed in the March issue of the Journal and if this was carefully placed in your binder, you will find the letter quite easily on p. 180.

You will remember that the Exemptions Regulations removed certain of the lighter handcuffs from prospective developers in the development charge field by providing (*inter alia*) for the exemption of " the use as any number of separate dwelling-houses of not more than three adjacent buildings, each of which was originally erected as a single dwelling-house" and (again *inter alia*, but this is the point which matters here) " was used for residential purposes on the appointed day ". Messrs. Bryant & Griffiths' case (which may not be uncommon) involves the application of the Regulations to the proposed conversion into two flats of a building which was undoubtedly erected as a dwelling-house but which on the appointed day was in use as a small boarding house. It is conceded that planning permission for a material change of use will be required but argued that no development charge will be payable on the ground that the property, originally erected as a single dwelling-house, was in fact being used for " residential purposes " on the appointed day as guests staying in the boarding house were " residing " there, and Messrs. Bryant & Griffiths contrast their case with that of an inn where use of the property is made by travellers in transit. I doubt if the proposition is quite as cast iron as is suggested—the inhabitants of a prison, who are not supposed to be travellers in transit, can, in one sense of the word, be said to reside in certain property as guests of His Majesty, but I should find is difficult to argue that a prison (or, say, an approved school which may well have been originally a large old house) was used for residential purposes within the meaning of the Regulations.

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[1] A further letter has now been received and is printed at p. 365, *post*.

I think on the whole that on a strict reading of the Regulations the "residential purposes" referred to are intended to be of a type related to the use of the property as a dwelling-house and our correspondents will be lucky if they persuade the Central Land Board to the contrary. They may well, of course, succeed (as they suggest) in establishing that in any event no development charge is payable because the value of the property has not been increased by the change of user. This, however, is a matter of valuation and delicate ground for the feet of a mere solicitor!

There still seems to be some confusion about the position as to payment of development charge where dwelling-houses are divided vertically into two or more single houses and as a good deal of this type of work is going on as owners of large houses split them up and retreat into the East or West wing as the case may be, we might just have another look at the relevant documents. In the early days of the Act there was much argument as to whether the exemption from development charge granted by the Act (Third Schedule, para. 2) in those cases where a single house was turned into flats, applied to case of vertical as well as horizontal division. This point was settled in a Central Land Board Press Notice of January 4, 1950,[2] which roundly declared that the dividing line could be vertical or horizontal and no development charge would be payable—so that was that. Then we come to a more general point arising on the Exemptions Regulations contained in SI 1950, No. 1233 which provide (reg. 2) for the exemption from development charge of the use as any number of separate dwelling-houses of "not more than three adjacent buildings, each of which was originally erected as a single dwelling-house, etc." These regulations were followed by an explanatory Press Notice (C.L.B./33, dated August 1, 1950) which suggests that the exemption is restricted to *lateral* conversion into *flats* and also refers to the exemption afforded by the Act itself (Third Schedule, para. 2) which by reference to the Central Land Board Press Notice of January 14, 1950, extends as we have seen to *vertical* as well as lateral division. But both exemptions are based on the same phraseology—"use as *separate dwelling-houses*" of a building or buildings which on the appointed day were in use as single dwelling-houses. I may be dense but I cannot see any statutory justification for drawing such a distinction between the two cases and certainly no justification on the basis of common sense. Perhaps some kind person will find the time and energy to have a battle with the Central Land Board on the subject and clarify the position as it is not difficult to visualise a case where a developer wishes to proceed with a single comprehensive scheme involving the complete internal re-organisation of two or three adjacent dwelling-houses with vertical and horizontal division lines between the different units of accommodation, showing considerable interlocking of the original structures. I think it is probably intended that in such cases no development charge shall be payable, but it would be nice to know for certain.

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[2] [1950] J. P. L. 122.

May I again remind my readers that in this type of case exemption from development charge does not mean exemption from the necessity of obtaining planning permission and of complying with the appropriate local bye-laws. Both of these hurdles will have to be jumped in any event, and they are, in my experience, sometimes a little higher than the intending developer anticipates.

Normal Processes of Valuation

By W. A. Leach, F.R.I.C.S.

The Development Charge Regulations (SI 1948, No. 1189) provide that development charges shall be determined by normal processes of valuation. Presumably that means "normal" at the date of the Regulations, but the Central Land Board's Practice Notes (para. 43) challenge valuers to evolve new methods.

That challenge is one to be feared, for new methods of valuation will only be required if and when new and more artificial types of valuation have to be made. The more one moves from free market value, the more artificial becomes the valuation and the more valuation becomes just an arithmetical or algebraic formula for arriving at an answer which is an assessment of something, but not of value.

The residual method.

For that reason it is surprising that valuers who express a willingness to contemplate new processes attack an existing method of valuation known as the "residual method". This consists of considering what will be the value of the land when the development has been completed, deducting therefrom costs, fees, loss of interest, etc., and an allowance for risk and profit, the result being the value of the land as it stands on the assumption that the development would be permitted and no development charge payable.

A valuer may look at a site and the redevelopment plan for the area and say from his knowledge and experience that its "consent value" would be so much per square foot, or yard, or acre. The client may be satisfied to buy on this estimation, but he may ask, "If I buy, how much will it cost to develop the site and what return shall I get on my total outlay?" The valuer is then faced with the "residual method" in reverse. If, as the result of taking fair letting values of the finished building and allowing fair costs of construction, etc., the project will show only 4% when any reasonable client would expect 5%, is not the only conclusion that the site value has been placed too high?

The "residual method" must, of course, be used fairly to reach a fair answer, not to prove a pre-conceived figure, and since the developer is taking the risks all matters of doubt must within reason be in his favour.

Thus if in present circumstances one would expect a 5% return on a particular venture and the development will not be completed for perhaps a year or more, one should consider the possible interim trend of interest rates. If they are temporarily low, because of some impending governmental financing or other reason, the purchaser may look for something higher than current rates of interest on his future investment; but he will rarely consider less than current rates. Again, rentals at the time of valuation may be high, and it may be reasonable to take future rents a shade lower. This may be necessary even although an allowance is made for rising interest rates, for although that ought *prima facie* to indicate a rising level of rentals, it may be due to general trade insecurity and be accompanied by an unwillingness to undertake fresh enterprises, such as the renting of new or additional accommodation. It has happened before now that a building has been completed as a slump sets in and stood empty for months.

The cost of construction is also a risky item in these days of rising costs of materials and labour and should include a margin for contingencies: also the delays now not uncommon on jobs mean that an ample allowance must be made for loss of interest on capital laid out before and during the development.

Developer's profit and risk.

Having allowed for these special risks, which should be made in a business-like way and not with excessive pessimism, developer's "profit and risk" must be considered. This depends on the size and character of the job. On a small urban building venture it may be 20% falling to, say, 10% on say £500,000. It should not be taken at less than 10%, for £50,000 is not an excessive reward for undertaking a £500,000 development scheme. For land development the percentages should be higher and if the development is likely to be slow, *e.g.*, a private housing estate in present circumstances, the percentage should have regard to the yearly rate of development for a normal developer.

Of course, if one lacks a building licence, the result of these calculations has to be deferred for a period which is not a matter of expert knowledge but sheer guesswork. In *Regent's Park Development Co., Ltd.* v. *St. Marylebone Corporation*

((1951), 1 P. & C. R. 394; [1951] J. P. L. 224) the Lands Tribunal deferred at 8% (including in the risks the possibility of the present powers of price and rent fixing remaining six years hence). These notes were in fact written before that case was heard, but the views of the Tribunal on the "residual method" are interesting.[1]

Refusal value.

Where there are buildings on the site with a useful life, the "refusal value" is reasonably easy to determine, but if the site has been cleared, then one has to value it for the purposes of the existing use and up to 110% of the existing cube. That may involve another residual valuation, for it will often be difficult to compare the relative value of the site as available for development in this way with the values known to have been secured for adjacent sites for past normal development. Also, as knowledge of land values is related mainly to building costs and rack rental values at a different level from those of today, and very often to sites developed more extensively and available for wider uses, and it is difficult to deduce a present day value from past experience. Soon the time will come when all knowledge of site values will be governed as much by development charges as sales, and it seems that the "residual method" will have to be accepted as a method of very general application.

The basis of value in the past.

An acre of building land was never worth £1,000 because a valuer said it was : if it was worth £1,000 it was because if purchased at that price, it could have been developed to show a reasonable profit. If there had been a number of sales of adjacent similar land at around £1,000 per acre, there may have been justification for taking that figure as a fair one without considering the possible development in close detail. In the absence of such comparisons spot valuations by different valuers would often show a fairly wide variation and the practical solution is to set up a "residual valuation" putting down the figures at each step after careful consideration and without attempting to reach any particular answer. It was, in the past, necessary to remember that the "residual method" gives a calculated value, and that owing to the vagaries of demand and supply the market value may be greater or less. In the case of building land it was often less, for the supply usually greatly exceeded the demand. The result was that usually building land changed hands at an arbitrary figure below the residual value (a point overlooked in the Uthwatt Report).

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[1] Some further comments on this method have recently been made by the Lands Tribunal, see *post*, p. 358.

To some extent the old prices still prevail so far as land for houses is concerned, for the selling prices of new houses are fixed at levels which generally include the land at something like 1939 values. Further, for all land, building licensing in general introduced uncertainties so that land has two values, one in the market at large, and the other to a person who can secure a licence. In these uncertainties there is a tendency to look back to 1939 values and it is often useful to work out a 1939 residual valuation. On the one hand it is felt that because of the depreciated value of currency, prices should be higher than in 1939, and on the other that because of the uncertainty of securing a licence to build, the value should be reduced by deferment. To the person who has a licence, the building value is immediate, and he would be prepared to pay substantially more than the general run of purchasers. How much more? Where the land is to be developed with houses, the only answer is to ascertain the value of the land included in the fixed selling price: in any case the " residual method " honestly applied should give the *maximum* value of the land, but it is not to be assumed that the purchaser would give to the vendor the whole value of a licence which the latter might himself be unable to obtain, and as development charges are based on estimated market values that is a factor to be kept in view.

In the future.

Generalising, there is now only one owner of the building rights and no competition to sell. Owners A, B and C no longer undercut each other: the developer can choose which plot he likes (if the required planning permission would be given for all) but the Central Land Board is not concerned to press any one in preference to the others. The old spot values have no validity, and when licensing is ended the " residual method " of valuation, which is a normal process (see any reported case for years past of compulsory acquisition of building land) will give directly the consent value.

That is inherent in the development charge system. Demand may modify the allowance to be made for " profit and risk ", but supply will never create bargains.

Again, when buildings are to be altered the residual method will often essentially be employed to determine the " consent value ". Some alterations or changes of use will entail consideration of the buildings as a whole, whilst others will enable short cuts to be taken by considering, for example, the additional floor or wing, but the residual method seems to be unavoidable.

Central Land Board Practice

Development Charge on Near Ripe Minerals [1]

(CLB/41, dated May 16, 1951)

The Central Land Board have announced that mineral undertakers should not for the present submit an application on form D.1 for assessment of development charge for the winning and working, after June 30, 1951, of minerals which they believe to be near ripe.

Near ripe minerals are, broadly, those in which a person engaged in mineral working on July 1, 1948, had an interest on that date, or was under binding contract to acquire an interest. No development charge is payable for any development of near ripe minerals which takes place before June 30, 1951, and the draft regulations proposed under the Mineral Workings Bill at present before Parliament provide for charge incurred after that date to be set off against payments from the £300 million fund.

The Board propose to send a form (S.14) to those mineral undertakers whose minerals appear to be near ripe in accordance with the draft regulations. The form will detail the near ripe minerals and will include the Board's consent to their development during the period from July 1, 1951, to the date of the Board's determination of their development value. These forms will be issued not later than June 1, 1951, and a mineral undertaker who has not received form S.14 by that date and who will be working minerals on and after July 1, 1951, should then apply for assessment of charge.

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[1] For particulars of the mineral workings near ripe scheme, see *post*, p. 348.

Development in Barsetshire

Section 82 land: Speedway Racing at Football Ground

The following conversation may be assumed to have taken place between S., a surveyor, and D.V., the district valuer, during an informal discussion on development charge :—

D.V. I see from the Form D.1 that you are claiming exemption from development charge in this case, but there is nothing on the form to indicate on what grounds.

S. We claim exemption under s. 82. This is local authority land.

D.V. Well, that's really a matter for the Central Land Board and not for me. I must say, though, that I don't think you have any chance of obtaining exemption under that section.

S. Why on earth not? I advised my clients to pay the full value under the impression that there would be no development charge.

D.V. You have stated on the form that your clients hold the land on lease from the Barsetshire County Council for a term of twenty-one years from December 25, 1950; you have also attached a copy of the planning permission, which I observe is dated May 7, 1951. May I refer you to paragraph 29 of the Practice Notes [1] :—

> "When any land was held by a local authority in such circumstances that the provisions of ss. 82 or 83 applied to it, and by reason of a disposal of such land it ceases to be within the relevant Section, no development charge will be payable in respect of the development on the land (whether carried out by the local authority or by a purchaser or lessee from that authority) for which planning permission has been given before the disposal. For subsequent developments charge is payable in the normal way. Local authorities are therefore fully entitled to sell or lease such land at full value for the permitted development on the basis that the purchaser or lessee will not be liable to development charge for that development.
>
> S. 92 (1) provides that any question whether land falls within s. 82 or s. 83 shall be determined by the Minister of Town and Country Planning."

So you see the essential condition is that the lessee or purchaser from a local authority should have obtained planning permission for his development *before* signing the lease or completing the purchase. In your case the permission is *after* the lease, and in my view you do not come within the exemption of s. 82.

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[1] Practice Notes (First Series) [1949] J. P. L. 252.

S. I have read not only the Practice Notes but also the section itself. Perhaps the answer we gave on the Form D.1 was a little misleading. It is true the lease is to be for twenty-one years from Christmas, 1950, but we haven't signed it yet. All we have at present is an agreement for lease; I understand the Board in such cases treat the land as within s. 82 (4).

D.V. Yes, there has been a ruling that the Board do not regard the development as liable to development charge when planning permission is obtained before the conveyance is made or lease executed,[2] even though there has been an earlier agreement.

S. I thought so.

D.V. It won't be necessary now for me to give you the details of the valuation I had prepared; I should like to point out that if you had filled in your form more clearly I should have realised that your development would not attract a charge and returned the file to the C. L. B. straight away. As it is I will send it back with a note of the circumstances.

S. Thank you. Now, what about this rather complicated case of the permission for speedway racing?

D.V. Let me see—your clients have a football ground at Hogglestock, and in June, 1948, they got permission to construct a speedway track and use it for speedway racing.

S. Yes, subject to certain conditions. Actually I advised them not to apply for permission but merely to construct the track and start racing. I didn't think it was a material change of use from football.

D.V. I should say you were wrong. I think the Minister has already held that a speedway at a greyhound track is development.

S. Anyway, they started the construction of the actual track before the appointed day, but they didn't finish it nor start racing until after. They made an application under s. 17 for a determination as to whether permission was required for the completion of the project.

D.V. I gather the local planning authority said permission was necessary.

S. Yes. We contended that the development came under s. 78 of the Act. The local planning authority rejected this, however, on the grounds that the works for the construction of the cinder track were not "works for the erection or alteration of a building".

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[2] [1950] J. P. L. 732.

D.V. Hard lines. Of course your clients already had all the necessary stands, fencing and the like in connection with the football.

S. Yes.

D.V. So I now have to assess the development charge. What rent will the speedway people pay?

S. I suppose you are entitled to this information! They are going to pay £500 a year, but that includes of course rates and overheads.

D.V. Say 15 per cent. of that is a true rent—that's £75 a year. Taking a short cut, I should say 10 years' purchase, or a development charge of £750.

S. I do not like your short cuts. Besides, you are assuming that we are going to carry out the development—you have not, necessarily, to make that assumption.[3]

D.V. Having laid out money in constructing the track I thing your clients are pretty well certain to go on with the speedway racing.

S. I think the developer, in view of the risk, would discount the rent and expect a good margin of profit. If the venture isn't a success the rent will have to be reduced—I have even heard of speedway tracks closing down; if there is any charge at all it ought to be nominal—say £50.

D.V. I'll take a smaller percentage of the £500 to allow for those contingencies—10 per cent. = £50 a year. So far as the years' purchase is concerned I think I've met you pretty handsomely by calling it 10.

S. The thing may not last for 2 years—your 10 years' purchase is much too high—that's 10 per cent. in perpetuity.

D.V. You have got unlimited planning consent, you know. The most I can do for you is to call it 8 years' purchase of £50, equals £400.

S. You haven't given my clients any credit for the work they did before the appointed day.

D.V. That doesn't affect the development charge, although it may be an element in their claim against the global sum.

S. Even your £400 is less than 10 per cent. of the restricted value, so they are shut out under the de minimis provisions of s. 63.

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[3] See [1951] J. P. L. 262.

Statutory Instruments

The Town and Country Planning (National Coal Board) Regulations, 1951

(SI 1951, No. 716)

[*Summarised*]

These regulations, made under s. 90 of the Town and Country Planning Act, 1947, apply with modifications certain provisions of the Act (set out in column (1) of Sched. I) relating to statutory undertakers, and to land of statutory undertakers, to the National Coal Board and to "specified land" of the Board (defined in reg. 2). This land includes all unworked coal, and surface land belonging to the Board which is used or held for a wide range of activities connected with coal mining. These activities include transport, sales, welfare and other similar activities as well as the actual getting and treatment of coal. The modifications to the provisions which are applied are set out in column (2) of Sched. I. Of these, the modification of s. 84 of the Act extends to the specified land of the Board the exemption from development charge enjoyed by statutory undertakers in respect of operational land, even where such specified land may, under the Coal Industry Nationalisation Act, 1946, vest after July 1, 1948; and the modifications to Sched. V to the Act provide that where applications and orders relating to the development of the specified land are dealt with Ministerially, they shall be dealt with by the Minister of Local Government and Planning, but the Minister of Fuel and Power must concur before any direction is issued excluding the Board's right to recover compensation in respect of the decision.

The regulations (Sched. II) lay down a special basis for calculating the compensation payable to the National Coal Board where decisions adverse to the Board are given by the Minister in relation to the underground working of coal. If the decision affects an existing mine, the compensation will cover any increased expenditure made necessary by the decision, together with a sum for any decrease in net receipts. In the case of a new mine the compensation will cover only abortive expenditure. Compensation in respect of other decisions affecting the specified land will in general be on the basis laid down for statutory undertakers by Sched. IV to the Town and Country Planning Act, 1944 (reg. 5); but under the proviso to para. 1 (3) of Sched. V to the Act of 1947 (as modified by the regulations) no compensation will be payable where permission for a new tipping site is refused or granted conditionally. The regulations came into operation on May 1, 1951.

Claims for Depreciation of Land Values (National Coal Board) Regulations, 1951

(SI 1951, No. 746)

[*Summarised*]

These regulations are consequent upon the Town and Country Planning (National Coal Board) Regulations, 1951, *supra*, which lay down the extent to which the provisions of the Town and Country Planning Act, 1947, relating to the operational land of statutory undertakers apply to lands of the National Coal Board. The National Coal Board are now in a position to make claims for payments under the Scheme to be made under s. 58 of the Act in respect of land other than land specified in those Regulations. These regulations prescribe the period within which such claims may be lodged by the Board (period ending October 31, 1951), notwithstanding that the normal period has already expired. The regulations came into operation on May 10, 1951.

Transfer of Functions (Minister of Health and Minister of Local Government and Planning) (No. 2) Order, 1951

(SI 1951, No. 753)

[*Summarised*]

This Order in Council is made under the Ministers of the Crown (Transfer of Functions) Act, 1946. The Transfer of Functions (Minister of Health and Minister of Local Government and Planning) (No. 1) Order, 1951,[1] transferred to the

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[1] See [1951] J. P. L. 150.

Minister of Local Government and Planning certain major functions of the Minister of Health, and this Order in Council is designed to transfer the remainder of the functions of the Minister of Health which relate to matters other than health.

The majority of the functions transferred are set out in Schedules I and II to the Order in Council, being functions relating to such matters as local government superannuation, local government finance, local authorities' land, public health, and civil defence.

The Order in Council also contains provisions amending the Transfer of Functions (Minister of Health and Minister of Local Government and Planning) (No. 1) Order, 1951, by constituting the Minister of Health the appropriate Minister for confirming compulsory purchase orders made by county councils for the purposes of the National Health Service Act, 1946, or the National Assistance Act, 1948, and by making available to the Minister of Health as well as the Minister of Local Government and Planning certain general powers in regard to reports, returns and inquiries which are contained in the Local Government Act, 1933, and the London Government Act, 1939.

The Order in Council also contains provisions rendered necessary by the transfer of functions. It came into operation on May 1, 1951.

Transfer of Functions (Minister of Local Government and Planning and Minister of Transport) Order, 1951

(SI 1951, No. 751)

[*Summarised*]

This Order in Council is made under the Ministers of the Crown (Transfer of Functions) Act, 1946, and transfers to the Minister of Transport functions (which were transferred from the Minister of Health to the Minister of Local Government and Planning by the Transfer of Functions (Minister of Health and Minister of Local Government and Planning) (No. 1) Order, 1951 [1]) in relation to the authorisation of a compulsory purchase of land by a county council for the purposes of s. 47 of the Highways Act, 1864, which relates to the improvements of highways. The Order in Council also contains provisions rendered necessary by this transfer of functions. The Order came into operation on May 1, 1951.

Civil Defence (Designation of the Minister of Health and the Minister of Local Government and Planning) Order, 1951

(SI 1951, No. 755)

[*Summarised*]

This Order does not relate to town and country planning, but is complementary to the orders referred to immediately above. It distributes the functions under the Civil Defence Act, 1948, civil defence functions of the Minister of Health, between the Minister of Health and the Minister of Local Government and Planning.

Book Reviews

Practical Points on Planning Law. Edited by Harold J. Brown, LL.M., D.P.A., L.A.M.T.P.I., Barrister-at-Law. (Sweet & Maxwell, Ltd. 1951. 15s.)

When I was very young the misguided publisher of a group of motor trade papers gave me the job of answering all the legal queries submitted by its readers. I might not have known very much about the subject in the first place, but I soon learned! A perusal of *Practical Points on Planning Law* makes it quite clear that the experts who have the heavy responsibility of concocting the best available answers to the multitude of questions submitted by those of us (and that means just about all of us) who are mystified by the ramifications of planning law, have been learning rapidly how to deal with this complicated subject.

This book is, of necessity, of real interest and help to those who have to try to advise on day to day practical difficulties arising in planning matters. It consists exclusively of a carefully arranged series of "cris-de-coeur" from puzzled practitioners in the professions enmeshed in the planning net, together in each case with a considered answer by an expert. Some of the questions and answers have previously been published in the *Journal of Planning Law*, but two-thirds of them see the light of day for the first time.

In planning law, we are still largely treading in the dark and it is probably true to say (as one answer frankly does in relation to the Use Classes Order (SI 1950, No. 1131)) that we are mixed up in a guessing game. My impression, however, is that with an increasing background of experience, the guessing in this book is of a pretty shrewd character.

I remember declaring in the *Journal of Planning Law* some little time ago that in my opinion, with due respect to all writers of articles, the "Practical Points" feature of the *Journal* provided more help for harassed readers than anything else. An examination of Mr. Harold Brown's collection of queries and answers fortifies me in my original opinion, and this book with its careful index of planning conundrums is well worth having in the office.

C. G.

Urban Estate Management. Second Edition. By W. A. Leach, F.R.I.C.S. (The Estates Gazette, Ltd. 1951. £2 5s.)

This is the second edition of a book first published in 1946, and even whilst in the press it has been overtaken by the unending stream of delegated legislation that almost daily descends upon the head of the hapless practitioner. This author has regained some of the lost ground by additional notes, printed on distinctive coloured paper, in the same order as the text, which, besides drawing attention to the various statutory instruments which have superseded or amended those referred to in the body of the book, include further comments on relevant cases and definitions. Footnotes in the main text warn the reader of certain of the amendments—but the habitual user of this book will no doubt find it well worth while to go carefully through the supplementary part of the book and insert a cross reference on the actual page of the main text.

Whilst there is a section dealing with " the hole in s. 23 " there is, of course, no reference to the Town and Country Planning (Amendment) Act, 1951, which became law after the publication of this book.

Although the author states in his preface that his book confines itself strictly to the management problems of the estate manager in a built-up area, and does not attempt to treat of valuation and building construction, for example, yet the valuer and building surveyor will find much that is useful within its pages.

Amongst the subjects dealt with—not, of course, exhaustively on account of limitations of space, but nevertheless adequately and in some respects more comprehensively than in many more specialised text books —are Rights, Obligations and Restrictions affecting property, Public Health, Housing, the London Building Acts, the Factories Act, Shops Act, Highways and Private Street Works—as well as the Town and Country Planning Act, 1947, and Rating and Valuation under the Local Government Act, 1948.

Then there are chapters on Easements, Boundaries, Letting, Leases and Agreements, Licences and Consents, Insurance Tithes, Income Tax and Land Tax, Compensation Levy and even the Civil Defence Act of 1939 which happily is in suspense at present.

Finally there are chapters on the management of various types of urban properties, not unnaturally written rather from the view-point of the owner and manager—tenants may have other opinions—and useful appendices on emergency legislation and other recent Acts.

A particularly useful feature of the book is the subdivision and numbering of each chapter coupled with a very comprehensive system of cross referencing. Another good point is the way in which the various definitions are brought forward to the place in the text where they matter; when dealt with separately they are apt to be overlooked.

The index is so compiled as to form in itself a key to the numerous subjects dealt with, but unfortunately for the busy practitioner it does not always lend itself to simplicity of reference when required merely as an index. For instance, there is no direct reference to Purchase Notice in the Index, and this subject can only be found by referring to " Town and Country Planning Act, 1947 ", subdivision " refusal or grant of permission", subheading "lapse of time for service of purchase notice"—a train of thought which is hardly likely to be in the mind of the reader who is in a hurry!

The student who reads this book with diligence will have more than a grounding in the subjects dealt with, and the property manager, owner and surveyor will find it an excellent refresher course which in addition will probably provide him with a fresh and challenging angle of thought on many of his problems, especially those connected with the Town and Country Planning Act of 1947.

W. F. O.

Emmet's Notes on Perusing Titles. Thirteenth Edition. By J. Gilchrist-Smith, LL.M., Solicitor. First Supplement to December 31, 1950. (Solicitors' Law Stationery Society, Ltd. 1951. Pp. xxi + 70. 7s. 6d.)

This Supplement is divided into two parts. Part I contains a General Summary dealing with certain matters in narrative form, such as bequests to hospitals, land tax and liability of solicitors. Part II is a noter up and this is much the longer and perhaps the more valuable.

The editor in his preface remarks that the problems caused by the Town and Country Planning Act, 1947, are not materially nearer to solution, though a few decisions and statutory instruments made since publication have affected the issue. He has not materially altered any of the views expressed in the parent work so far as we have been able to ascertain, nor does he refer to the Planning and Compensation Reports, to which references should clearly be given, since a chapter appears on Town and Country Planning. It is, perhaps, therefore not surprising that although the parent work contained frequent references to an early series of articles and precedents in this *Journal* no corresponding references appear to the more recent series. The editor has also corrected his references to Cheshire's *Real Property* to meet the sixth edition, but does not appear to have seen fit to draw attention to the fact that that author's view of the effect of the Town and Country Planning Act appears to differ radically from that of the editor.

On the factual side the editor has incorporated references to and sometimes the substance of the new statutory instruments and on this score the Supplement should be welcome.

H. P.

BOOKS RECEIVED:—

Town and Regional Planning Law in Ireland. By John Miley and Frederick C. King, Barristers-at-Law. (Browne and Nolan, Ltd., Dublin. 1951. 21s.)

Parliamentary Intelligence

Replies to Questions in the House of Lords

Development charge for successive period permissions

Lord Meston raised the question as to how development charge should properly be assessed when planning permission has been given for a limited period only. He suggested that if, for example, planning permission for a factory was limited to five years, it was unfair that the District Valuer and Central Land Board should assess the charge on the basis of the factory having a life of fifty years.

Lord MacDonald of Gwaenysgor, Paymaster-General, said that a low development charge would result where there was planning permission for a limited period since the development charge would be the difference between the value of the land with the limited planning permission, which would be small, and its value without that permission. For a subsequent period a higher charge would be payable, the refusal value in such case being the value of the land with a factory on it which could not be used for any purpose. As an alternative valuation, the Board offer an assessment based on rental value, whereby the same charge is payable in respect of the initial period permission and further permissions of the same duration. (April 12, 1951. H. L. Debates, Vol. 171, col. 297.)

Preservation of Historic Houses

In reply to the Marquess of Salisbury, who inquired as to the Government's intentions in relation to the recommendations of the Gowers Committee, the Minister of Civil Aviation, Lord Pakenham, said that the Government were unable to accept the proposal to exempt the owners and occupiers of specified houses from taxation. But legislation would be introduced next session to empower the Minister of Works to assist in the preservation of outstanding houses. The Minister would be empowered to do work himself, or to make loans or grants in order to preserve the structure of the houses. (April 26, 1951. Vol. 171, col. 535.)

A similar statement was made on the same day in the House of Commons, see below.

Replies to Questions in the House of Commons

Advertisement Regulations

In a written answer to Sir P. Macdonald who asked whether the Minister of Local Government and Planning, with a view to avoiding unnecessary applications to local authorities, would amend the advertisement regulations relating to hotels, Mr. Dalton said that he was not prepared to diminish the powers and responsibilities of the local authorities in this field. (April 18, 1951. H. C. Debates, Vol. 486, col. *176*.)

Release of Requisitioned Houses

In a written reply to Mr. Hutchinson the Minister stated that no instructions were being given by his department to local authorities with regard to the releasing of requisitioned houses to their owners if the owner or a member of his family required the house for occupation. But he thought that local authorities should make an order of priority for the release of requisitioned property, and that in doing so some special consideration should be given to owner-occupiers. (April 23, 1951. Vol. 487, col. *28*.)

Preservation of Historic Houses

In a written reply to Mr. Wallace, the Chancellor of the Exchequer, Mr. Gaitskell, made a statement relating to historic houses corresponding to the statement made on the same day in the House of Lords by Lord Pakenham, referred to above. (April 26, 1951. Vol. 487, col. *86*.)

Development Charge

In a written answer to Mr. Robson-Brown, the Minister stated that he had no power to rescind or vary a determination of development charge made by the Central Land Board. He had not given any direction to the Board requiring a developer to be informed as to the basis on which a charge had been assessed, but the district valuer, on behalf of the Board, always told the developer the amount of the charge he was proposing to make and invited the developer to discuss it with him if he did not agree with it. (April 27, 1951. Vol. 487, col. *104*.)

Industrial Buildings

In reply to Mr. Watkinson, the Minister said that considerable simplifications to the procedure for obtaining consent for the erection of industrial buildings had been made by the 1950 General Development Order, and many of the stages through which an application formerly had to pass had now been cut out. (May 1, 1951. Vol. 487, col. 1001.)

Ministerial Information and Circulars

Mineral Workings Near Ripe Scheme[1]

The proposed near ripe scheme in respect of mineral workings, promised by the Chancellor of the Exchequer in June, 1947,[1] has now been published in the form of preliminary draft Regulations, contained in a Memorandum presented to Parliament in April and published as a White Paper (Cmd. 8217. H.M. Stationery Office. 9d.).

The Regulations, to be known as the " Mineral Development Charge Set-off Regulations, 1951 ", will be made under s. 81 of the Act of 1947, as amended by the Mineral Workings Act, 1951, which is at present still a Bill before Parliament.

The draft Regulations apply to minerals in which a mineral undertaker had a freehold or leasehold interest on July 1, 1948, and in respect of which a claim on the £300 million fund, qualifying for a payment, has been duly made.

Principles of the Regulations.

The Regulations have been based upon the following main principles:—

(*a*) The development charge payable on the working of the minerals is to equal the payment in respect of those minerals from the £300 million, or, in a leasehold case, the sum of the payments due to lessor and lessee.

(*b*) To the extent that planning permission to work the minerals is granted, the development charge will be set off against the payment (in a leasehold case against both payments).

(*c*) To the extent that permission to work the minerals is refused, the payments will be issued (subject to (*d*) below). In a leasehold case there is provision for reducing the rent payable in respect of minerals which cannot be worked and for transferring an appropriate part of the lessee's payment from the £300 million to the lessor. There is also provision for issuing payments in certain circumstances on revocation of permission, on compulsory purchase, and on the grant of permission for development other than mineral development.

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[1] As to development charge on near ripe minerals, see also p. 336, *ante*.
[2] [1949] J. P. L. 426.

(*d*) If planning permission is refused, a claimant can "disclaim payment", with the result that, if permission is granted later and development charge becomes due, that charge will be paid by way of set-off. In a leasehold case, it is necessary for both parties to agree to disclaim.

(*e*) Where a planning permission granted since July 1, 1948, contains conditions which go beyond the mineral undertaker's previous obligations, and the estimated cost of work necessary for complying with the conditions exceeds a certain minimum, a payment will be made in respect of the cost. The payment will be made when the conditions have been complied with and to the person who has done the work.

Results of the Regulations.

The main results of the Regulations are as follows:—

(*a*) *The mineral undertaker*, whether freeholder or lessee, will make no actual payment of development charge, nor will he receive anything from the £300 million, except to the extent that he is prevented by planning restrictions from working the minerals.

(*b*) *The lessor*, in a leasehold case, will continue to receive the rent and royalty reserved under his lease to the extent that permission to work the minerals is granted: to the extent that working is prevented by planning restrictions, he will receive a payment from the £300 million.

(*c*) *A sale or lease* of minerals to which the Regulations apply can be on the footing that the purchaser or lessee will not have to pay any development charge for working the minerals.

Notes on the Regulations.

The Memorandum contains the following notes on the Regulations :—

Regulation 2 defines various terms used in the Regulations. The phrase "date of satisfaction", which appears several times in these notes, means the date fixed under the 1947 Act for the general issue of payments from the £300 million.

Regulation 3 defines the scope of the Regulations. The Central Land Board are given discretion:

(*a*) to admit minerals which, although not owned or leased by a mineral undertaker on July 1, 1948, can reasonably be regarded as a mineral undertaker's reserves—*e.g.*, where the owner had previously worked the minerals but his operations were temporarily suspended on July 1, 1948, or where the owner was associated with a mineral undertaker (paragraph 3);

(*b*) to admit minerals which a mineral undertaker was entitled to work under oral arrangements without any written lease (paragraph 5); and

(*c*) to exclude certain cases where the minerals, although owned by a person engaged in mineral development, cannot reasonably be regarded as a mineral undertaker's reserves (paragraph 4).

Where on July 1, 1948, a mineral undertaker was under an enforceable contract to acquire an interest in minerals, they are treated as if he owned the interest on that date (paragraph 2).

Regulation 4 applies to certain cases where the right to receive payment from the £300 million has been severed from the ownership of the minerals—*e.g.*, where the owner of the minerals has assigned the right to the payment, or has sold the minerals but retained the right to the payment. The person entitled to the payment from the £300 million has, under certain conditions, an option to contract out of the Regulations. (If the option is exercised the claim or claims will be paid out, at 100 per cent. of development value, at the normal time, and development charge will be payable in the ordinary way.)

Regulation 5 provides for an apportionment of development value where a claim on the £300 million is not limited to minerals within the Regulations—*e.g.*, where it also covers minerals to which the Regulations do not apply, or where the land has value for other development as well as for mineral working.

Regulation 6. Payments from the £300 million in respect of minerals to which the Regulations apply will not automatically be paid out on the "date of satisfaction", but will be retained until disposed of in accordance with the Regulations.

Regulation 7. Where planning permission to work the minerals is granted, the development charge is deemed to be determined as the amount of the payment from the £300 million (or, in a leasehold case, the sum of the payments due to lessor and lessee). Where the permission covers part only of the minerals comprised in a claim, the charge equals the appropriate portion of the payment. The development charge is deemed to be paid on the date when planning permission is granted, or on the " date of satisfaction " (see note on Regulation 2), whichever is the later : up to that point the Central Land Board are deemed to have security for the charge.

Regulation 8. Where planning permission is refused the claims will be paid out (subject to Regulation 9) as soon as practicable after the refusal, or the " date of satisfaction ", whichever is the later. The amount to be paid will be so much of the payment as relates to the minerals covered by the refusal.

A condition in a planning permission requiring some minerals to be left unworked is treated as a refusal of permission for those minerals. A permission for a limited period is treated as a refusal for such minerals as cannot reasonably be expected to be worked within the period of the permission (paragraph 4).

Regulation 9 gives an option to disclaim payment on refusal of planning permission (see principle (*d*) above).

The option is available only on the first refusal. If permission to work the minerals is refused for a second time, the payment or payments are then issued (paragraph 3).

Where payment has been disclaimed, the claimant may at any time thereafter ask for it to be issued. In a leasehold case the agreement of both parties is required before payments are issued after being disclaimed (paragraph 4).

Regulation 10 concerns cases where, in relation to land containing minerals within the Regulations, permission is granted for non-mineral development and development charge is payable.

In general, if no permission for mineral development has previously been granted, the claimant can have his payment issued. Alternatively, he can leave it for use in paying development charge by set-off if later the minerals are worked. In a leasehold case, the agreement of both parties is needed before payments are issued.

Where permission for mineral development has previously been granted (and the development charge on that development has therefore been deemed to be paid or secured), there is no provision for the issue of payments; but in the assessment of development charge on the non-mineral development the fact that charge has been paid on mineral development would be taken into account.

Regulation 11 deals with revocation of planning permission before the " date of satisfaction "—*i.e.*, before development charge is deemed to be paid. The payment from the £300 million, or the appropriate part of it, is to be issued.

Other revocations will be dealt with under existing provisions—*i.e.*, s. 22 of the Town and Country Planning Act, 1947, as modified by the Town and Country Planning (Minerals) Regulations, 1948 (SI 1948, No. 1521).

Regulation 12 deals similarly with compulsory purchase (or purchase by agreement by an authority having compulsory powers).

Regulation 13 secures that, after a payment from the £300 million has been issued, the Regulations no longer apply to the minerals : thus, if subsequently a development charge becomes due, it is calculated and payable in the normal way.

Regulation 14 provides for payments in respect of the cost of work necessary for complying with conditions in a planning permission in the cases referred to in principle (*e*) above.

Regulation 15 provides for contributions to the Ironstone Restoration Fund in certain cases where planning permission to work ironstone is revoked or land containing ironstone is compulsorily acquired (see clause 5 (4) of the Mineral Workings Bill).

Regulation 16 applies clause 27 of the Mineral Workings Bill in the modified form set out in the Schedule to the Regulations. Where, under the Regulations, the payment from the £300 million is issued, the Lands Tribunal may modify a mining lease so that the payments which the lessee is required to make do not include the value of minerals which he cannot work. Since the lessor's claim on the £300 million will have been made on the basis that he would continue to receive the full rent, provision is made for the transfer to him of an appropriate part of the lessee's payment, the amount being settled by the Lands Tribunal in default of agreement.

Regulation 17 applies a machinery provision of the 1947 Act dealing with serving of notices.

Regulation 18 provides for the issue, twenty years after the "date of satisfaction", of all payments from the £300 million then outstanding—*i.e.*, not previously issued under the Regulations or used in payment of development charge.

MINISTRY OF TOWN AND COUNTRY PLANNING CIRCULARS

[*Continued from* [1951] J. P. L. 149]

Circular No. 92, dated January 27, 1951. Reproduction of Survey and Development Plan Maps. [4*s*. 6*d*.]

MINISTRY OF LOCAL GOVERNMENT AND PLANNING CIRCULARS

[*Continued from* [1951] J. P. L. 149]

Circular No. 6, dated March 28, 1951. Development charge on houses for members of the agricultural population. [2*d*.]

Circular No. 19, dated April 25, 1951. Schedule of suggested minimum street widths. [2*d*.]

Notes of Cases

Section 85—Land Held on Charitable Trusts

Appeals from determinations by the Minister under s. 92 of the Act of 1947 are giving rise to a small crop of cases on charitable status, of which the latest was **The Abbey, Malvern Wells, Ltd. v. Minister of Town and Country Planning** (May 2, 1951). The plaintiffs in this case were a private company carrying on the business of a girls' school. The company was controlled by a council, and all the shares were vested in a body of trustees who were the same persons as the Council, on trusts set out in a trust deed.

Danckwerts, J., held that the school was a charity (having heard argument that a school was not necessarily charitable unless the education provided by it was not wholly at the scholars' expense), and that in order to ascertain the position of the company which actually owned the land in question, it was necessary to look at the state of things at the appropriate time. He found that the company which owned the land on which the school undertaking was carried on was controlled by the council whose actions were regulated by the trusts governing the school. He distinguished *Girls Public Day School Trust, Ltd.* v. *Minister of Town and Country Planning* (*ante*, p. 58) in which the company had the power to pay a dividend (although it had never exercised it), and shares could also be transferred to outsiders. In the result, the land in question was within both parts of s. 85 (1), and the Court made a declaration to that effect.

B. K. S.

Validity of Enforcement Notices

Perrins v. Perrins and Another (Divisional Court: Lord Goddard, C.J., Croom-Johnson and Streatfeild, JJ. April 25, 1951). The Clerk of the Southport Corporation appealed against a decision of the Southport magistrates, who had refused to convict the respondents for contravention of enforcement notices served under the Act of 1947.

The enforcement notices had related to the use of land as caravan camping sites. The owners of the land had not taken any action in respect of the notices within the statutory period of twenty-eight days, but when summoned for alleged contravention of the notices they had questioned their validity. The justices had decided that they were entitled to go into the validity of the notices and that the use of the land was not in contravention of the Act.

The Divisional Court held that where an enforcement notice was served and there was no appeal against it or application for planning permission within the statutory period (stated in the notice—not less than twenty-eight days) the notice becomes effective. The respondents had not so appealed against the enforcement notices served upon them, and could not thereafter dispute their validity. The appeal was allowed with costs, and the cases remitted to the justices with a direction to convict.

A further case in which one of the respondents in the above case appealed against a fine of £10 for using a hut in contravention of an enforcement notice was not proceeded with, and the appeal was dismissed with costs.

H. J. J. B.

*Lands Tribunal Decisions**

Armstrong v. Minister of Transport (Ref. 19/1950, April 30, 1951). This was a claim for compensation for the compulsory acquisition of 3,869 sq. yds. (.8 acre) of land, excluding minerals, at Haltwhistle, Northumberland. Notice to treat had been served on December 7, 1945, possession having been taken by arrangement on February 13, 1939. Compensation accordingly fell to be assessed under s. 57 of the Act of 1944.

The claimant, who appeared in person, claimed " nothing short of £400 ". The District Valuer, for the acquiring authority, submitted a valuation of £40 for the land and £175 injurious affection, totalling £215.

The Tribunal (J. P. C. DONE, Esq., F.R.I.C.S.) assessed the value of the land taken on the basis of the rental value of the farm of which it had formed part, and arrived at the same figure as that reached by the District Valuer, £40.

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* Full reports of these cases will be published in *Planning and Compensation Reports*.

The District Valuer had assessed the injurious affection to the remaining land on estimates of its annual value before and after the acquisition of the land in question and the reconstruction of the access road to the farm which the acquiring authority's works had rendered necessary. The Tribunal considered the injurious affection under the various headings under which it was alleged to arise, and awarded nothing for fencing and inadequacy of passing places on the road, £200 for steeper gradient which would involve increased upkeep costs estimated at £8 per annum, £22 for the turn-out into the road from a side-track being too sharp, £12 for necessary roadside fencing, and also £24 for timber cut down during the operations.

These sums total in all £298, and the Tribunal awarded £300 as the compensation.

In view of the attitude of the claimant, who had originally had qualified advice but had disregarded it and repudiated a settlement tentatively agreed on her behalf, and who had not prepared a claim in accordance with the statutory requirements, and had been un-cooperative towards the authority and the Tribunal, the claimant was ordered to pay to the acquiring authority ten guineas costs.

Hyatt v. Dover Corporation (Ref. 124/1950, April 24, 1951). This was a claim for compensation for the acquisition, following service of a purchase notice under s. 19 of the Act of 1947, of a war-damaged shop and dwelling-house at Dover in respect of which a cost-of-works payment was payable, and which was situated in an area subject to a declaratory order under s. 1 of the Act of 1944. The purchase notice had been served on the Corporation on December 9, 1948, and confirmed by the Minister on April 25, 1949, and notice to treat was deemed to have been served on that day. On February 15, 1949, the Corporation had submitted to the Minister of Health an order declaring the premises in question to be unfit for human habitation, and this had been confirmed by the Minister on May 16, 1949.

The parties were agreed that if the compensation fell to be assessed on the same principle as would apply to an acquisition under Part IV of the Act of 1947, it amounted only to site value, £160; but otherwise, under s. 53 of the Act of 1947, to £700.

The Tribunal (CECIL H. BAILEY, Esq., B.SC., M.I.C.E., F.R.I.C.S.) held that as the purchase had been made pursuant to the purchase notice and not under a compulsory purchase order under the declaratory order or the unfitness order, primary regard must be had to s. 19 of the Act of 1947, which stated that the acquisition was to be in accordance with the provisions of Part IV of the Act, and so brought it within s. 44 (4). The declaratory order had the same effect by virtue of the wording of para. 17 of Sched. 10 of the Act of 1947.

Section 44 (4) applied para. 9 of Sched. V of the Act of 1944 as amended and set out in Sched. XI of the Act of 1947, which (subject to certain conditions which the Tribunal held were fulfilled in this case) in respect of a house unfit for human habitation applied Part III of the Housing Act, 1936, and hence s. 40 (2) of that Act, under which compensation is to be site value only.

The Tribunal, which expressed regret that on a matter of purely legal interpretation the claimant had not been legally represented, accordingly assessed the compensation at £160.

Perkins v. Middlesex County Council (Ref. 16/1950, May 3, 1951). This was a claim for the assessment of the compensation for two adjoining plots of land, upon one of which there had been a house and garage until demolished in 1940, and upon the other of which there had been a house until demolished in 1940 and a garage which had still been in existence at the date of notice to treat, July 27, 1948.

The claimant submitted two valuations: one of £3,830 on the basis of reinstatement of the second house, which had consisted of a ground floor flat with a maisonette on the first and second floors sub-divided into two complete but not self-contained flats, as three self-contained flats; the other, of £3,753, on the assumption that rebuilding the maisonette as two separate dwellings would not be permitted.

The Tribunal (SIR WM. FITZGERALD, K.C., and J. P. C. DONE, Esq., F.R.I.C.S.) assumed that conversion of the maisonette to two self-contained flats would have been permitted and no development charge payable therefor.

They rejected the assumption, made by the claimant's valuer, that the premises were to be regarded as notionally re-instated, as the demolition of the houses had not been due to war damage and s. 53 of the Act of 1947 therefore did not apply, and under s. 52 (3) the notional lease must relate to the premises in their state on the date of notice to treat. The Tribunal also rejected the assumption that the premises were specially attractive to a potential purchaser because the existing use envisaged two houses and garages. But they accepted that the site was exceptionally well situated and that allowance must be made for this. In using the residual method of valuation the claimant's valuer had not allowed for the notional lease in the case of the second plot and had not allowed for the profit which a purchaser would expect on a speculative transaction. In a case such as this where the proposed scheme of redevelopment was a familiar one, a spot valuation was preferable to the residual method.

The Tribunal adopted as a basis of calculation, a valuation submitted by the acquiring authority. They considered, however, that a purchaser at the date of notice to treat would assume that in six years' time there would be no restrictions upon building, and not that there would still then be a certain licensing stringency as assumed by the authority's valuer.

A figure of £15 per foot was adopted in respect of 50 ft. of frontage for each house, and the Tribunal considered that the remaining 100 ft. of frontage should not merely be related to its rental value but having regard to its value for inclusion in the gardens of the houses should be valued at £7 10s. 0d. per ft. On these figures, allowing £250 for the present value of the existing garage, and calculating the capital value on a 6 per cent. basis deferred six years on account of the notional lease, the Tribunal assessed the compensation at £1,875.

*Notes of Planning Decisions**

Land Required both for Houses and for a Hospital

The following is an extract from the letter of the Minister of Town and Country Planning dated December 21, 1950, dismissing an appeal against the failure of the Wiltshire County Council to issue a decision on an application to permit the laying out of land for development with houses at Swindon.

"At the inquiry the county council explained that the regional hospital board are proposing to acquire the land in question for the construction of a new general hospital and that while the council had given no formal decision on the application by the owners, they supported in general the proposals to use the land for hospital purposes, since it appeared that it would be more difficult to satisfy the reasonable requirements of the hospital board than it would be to find land for housing, particularly bearing in mind the number of building licences likely to be granted to private developers in the next few years.

The Minister has consulted the Minister of Health and is advised that there is an urgent need to provide a new hospital in this district and that it is very important that the site selected should be close to the existing Victoria Hospital, in order that the new hospital may function, as building proceeds, in conjunction with the older hospital.

The Minister wishes to make it clear that a decision on the use of this land for hospital purposes is not within his jurisdiction on this appeal and that this will fall to be considered by the Minister of Health when a compulsory purchase order is made. He is satisfied that the land is suitable for residential development but, on the other hand, it appears to be equally suitable for a hospital, whereas alternative sites which have been suggested for the hospital are stated to be very much less suitable. In these circumstances the Minister has come to the conclusion that he would not be justified in granting permission for the land to be developed for housing."

[By courtesy of the County Planning Officer, Wiltshire County Council.]

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* The Managing Editor desires to express his thanks to those who have been kind enough to send to this Journal particulars of planning decisions, and hopes that he will continue to receive particulars of planning decisions which involve points of general interest.

Filling in and extension of porch of dwelling-house

The following is an extract from the letter dated April 26, 1951, of the Minister of Local Government and Planning allowing an appeal against the refusal of the Wembley Borough Council to permit the filling in and extension of the porch of a dwelling-house at Wembley.

" The appellant proposes to fill in with solid brickwork the sides and front of the existing open-columned porch, and to carry its projections forward by 2 ft. 6 ins. His subsequent aim is to carry up this enlarged porch through the first floor, roof it at eaves level and use the overporch area as a fourth bedroom reached from the existing first floor landing. The Minister considers that provided the proposed extension is rendered in cement and coloured to match, in tone and texture, the main façade of the appeal premises, the appellant's proposals are not likely to have any adverse effect whatever on the appearance either of the house or of the street as a whole."

[By courtesy of the Town Clerk, Borough of Wembley.]

Conversion of House into Flats

The following is an extract from the letter of the Minister of Local Government and Planning dated April 30, 1951, allowing an appeal against the refusal of the Frinton and Walton Urban District Council to permit the conversion of a dwelling-house at Frinton-on-Sea, into two flats.

" The Minister agrees with your council to the extent that the conversion into flats of all, or the majority, of the large houses in this part of Frinton would lead to a change of character, but in view of the evidence submitted on behalf of your council of the continuing demand for such houses for single family occupation, such a contingency appears to be remote.

The present appeal is concerned with the proposed conversion of one house, and the Minister is of the opinion that there is no evidence to show that the proposed conversion of this one property will in itself lead to any deterioration in the character of the district. There is no reason to suppose that residents of these flats are likely to be less careful of the undoubted amenities of the neighbourhood than their neighbours who live in the houses, and in this particular case the Minister is fortified in his view since he understands that the owner and her husband will continue to live in the lower part of the house. He has no doubt that for her own sake the owner will exercise care in the selection of a tenant.

The Minister has, therefore, come to the conclusion that there is no valid planning objection to the proposal and he accordingly allows the appeal. This decision is, however, without prejudice to the consideration by the Council on merits of any other application that may be received for development of a similar character."

[By courtesy of the Clerk of the Frinton and Walton Urban District Council.]

Time limit condition on conversion of house to flats

The Minister of Local Government and Planning has allowed an appeal against a condition imposed by Penge Urban District Council when granting permission for the conversion of a dwelling-house into four flats. The condition was that the consent should operate only until December 31, 1965, and then to be open to review.

The Minister appreciates the Council's concern for the future planning of the area, but thinks any proposals for redevelopment must be long-term, conditioned largely by the age and stability of the buildings. As he considers the appeal property has still many years of useful life, he thinks the condition is unnecessarily restrictive.

[By courtesy of the Public Relations Officer, Kent County Council.]

Winning and working of chalk and marl for cement

The following is an extract from the letter dated April 11, 1951, of the Minister of Local Government and Planning, giving his decision on an application for permission to develop land near Cambridge by the winning and working of chalk and marl for the manufacture of cement.

" The Minister has given consideration to the conflicting claims to the land and to the reasons which the county council advanced in support of their contention that the Norman Cement Works should be extinguished within a period of twenty-five to thirty years.

The Minister agrees with the county council that it is desirable that all reasonable steps should be taken to protect the amenities of a city such as Cambridge from any unnecessary damage. The Norman Cement Works have, however, been in existence since 1905 and were originally outside the boundaries of Cambridge. While normally it is considered undesirable that quarrying operations should take place on land adjacent to residential development, the housing development has taken place round the works in recent years and has been carried out in full knowledge and acceptance of its existence.

The Minister has also had to take account of the national importance of the maintenance of cement production. The demand for cement has steadily increased during the past twenty-five years and shows no signs of abatement.

The Minister notes that the thirty-year period proposed by the local planning authority for the continuance of the Norman Cement Works is apparently based on what the authority consider is the life of the existing plant and especially the kiln installed at these works, and on the assumption that cement works require reconstruction at twenty-five yearly intervals. Reconstruction at such short intervals is, however, abnormal.

The Minister appreciates the local planning authority's view that the Norman Cement Works should be closed as soon as possible but the proposed period of 30 years is not consistent with the planning permission granted by the Cambridge Borough Council on October 21, 1947, as a result of which the works were reconstructed at a capital cost of £340,000. The application dated February 21, 1947, for the raw material land was already before the council prior to the granting of planning permission for the reconstruction of the works and although that application was restricted to the lands in the ownership of your company or held on lease the necessity for working further areas was fully stated by your company.

The Minister grants permission for the development of land by the winning and working of chalk and marl for the manufacture of cement at Norman Cement Works, Cambridge, shown coloured pink on the annexed plan, but excluding the areas coloured blue on the said plan, subject to the following conditions :—

(1) Quarrying operations in the chalk quarry at Lime Kiln Road shall not be carried out below approximately forty feet above ordnance datum, or below the water table, whichever is the higher.

(2) A tree planting scheme for the screening of the chalk quarry at Lime Kiln Road and a landscape scheme for the treatment of the marl areas shall be prepared

and agreed with the local planning authority (or in the absence of agreement as shall be determined by the Minister), and shall be carried out contemporaneously with the quarrying operations.

(3) All plant and machinery shall be removed at such time or times as may be agreed with the local planning authority that they are no longer required for the purpose for which they were installed or in default of agreement, as shall be determined by the Minister."

[By courtesy of the County Planning Officer, County of Cambridge.]

Time Limit Condition to Limit Compensation on Ultimate Acquisition by Local Authority

The following is an extract from a letter dated February 12, 1951, of the Minister of Local Government and Planning allowing an appeal against the conditions attached by the Cheshunt Urban District Council to permission for the erection of seven greenhouses at Windmill Lane, Cheshunt, Hertfordshire. The conditions in question limited the permission to a period ending on December 31, 1969.

" It was stated on behalf of your Council that they proposed at some future date to acquire the nursery and to incorporate it in the adjoining public park. The condition is intended to restrict the value of the land to its present use value because the Council feel that they would otherwise find it financially impossible to carry out this proposal.

It appears that the Council do not object to the proposed greenhouses as such, but only to their value for removal purposes. Apart from the question whether or not the building operations proposed are permitted under the General Development Order, the Minister considers that no sufficient planning reason has been shown for restricting the permission to twenty years.

He accordingly allows the appeal and discharges the conditions in question."

[By courtesy of the County Planning Officer of the Hertfordshire County Council.]

Extraction of Shingle from Foreshore

The Minister of Town and Country Planning has conditionally allowed an appeal against the refusal of Kent County Council to permit the continued extraction of shingle from the foreshore at Folkestone.

The grounds for the Council's refusal were that a risk of denudation of the land would be incurred. No other objections were raised to the continuance of the workings.

The appellants contended that experience showed that there was no risk of denudation if shingle were extracted from the area east of the Victoria Pier and west of the British Railways' Pier, and the Minister has allowed the appeal so far as it relates to this area. He points out, however, that the Coast Protection Authority has powers to prohibit the removal of material from the seashore if erosion and encroachment by the sea is likely to occur, whether or not planning permission has been granted.

[By courtesy of the Public Relations Officer, Kent County Council.]

Erection of Additional Petrol Pump at Garage—Traffic Considerations

The following is an extract from the letter of the Minister of Town and Country Planning allowing an appeal against the Somerset County Council's refusal to permit the erection of a third petrol pump at a garage at Wellington, Somerset.

" While the Minister agrees with the Council that this filling station is badly sited in relation to the trunk road, he notes that the Council have not suggested that they intend to call for its removal under powers available to them in the Act. He considers that the additional pump will not appreciably increase the objections which are inherent in the site, and since the proposal will do no more than restore the position at the garage before the war, he has come to the conclusion that it should be allowed."

[By courtesy of the Clerk of the Somersetshire County Council.]

Correspondence

To the MANAGING EDITOR,
JOURNAL OF PLANNING LAW.

Sir,

Development Charge Exemptions Regulations, 1950

Referring to our letter on the subject which you published in the March issue of the Journal, we think your readers might be interested to know that (1) the Central Land Board refused to accept our contentions that this case came within the Development Charge Exemptions Regulations, 1950, and (2) the Board in the circumstances assessed the development charge at nil. A happy ending!

Yours faithfully,
BRYANT & GRIFFITH,
Solicitors.

Minehead.

To the MANAGING EDITOR,
JOURNAL OF PLANNING LAW.

Sir,

The Assessment of Claims under Section 59

I was most interested to read the letter which appeared in the May, 1951, issue of your Journal and I agree that the position, on the facts stated, is far from satisfactory.

I would like to take the matter a step further and to show how, in my opinion, it is possible to produce an equally unsatisfactory state of affairs by a very slight adjustment in another part of the valuation.

Accepting Messrs. Hindwood & Co.'s case as the basis but assuming that a compromise has been arrived at with the District Valuer whereby the development value has been agreed at say £1,175 thus:—

Unrestricted Value	£1,425
Restricted Value	£ 250
Development Value	£1,175

but that there is a difference of opinion as to the restricted before-damage value in the "War-damage Loss" computation inasmuch as the property, assumed to be freehold, was immediately before the occurrence of the war damage let to a 1939 Act controlled tenant and producing say £75 per annum net. The District Valuer considers 5½% the fair rate to adopt for capitalisation whereas the owner's surveyor is of the opinion that, having regard to the security, it should be 5% but nevertheless endeavours, without success, to effect a compromise at say 5¼%. The respective "War-damage Loss" valuations are thus as follows:—

	@ 5%	@ 5¼%	@ 5½%
	£	£	£
Restricted before-damage Value	75	75	75
Y.P.	20	19	18.2
	1,500	1,425	1,365
Restricted after-damage Value	250	250	250
"War-damage Loss"	1,250	1,175	1,115

On the basis of a 5% return, the development value would be less than the war-damage loss and at 5¼% it would be equal to the war-damage loss. In both of these cases, the s. 59 payment would be the development value figure of £1,175 in hard cash at 20s. in the £ whereas, by adopting the figure of 5½%, the development value would be greater than the war-damage loss and would result in no s. 59 payment at all but merely a much less attractive claim of £1,175 under s. 58. All because of a variation in the percentage rate adopted of *one-quarter per cent.*

Yours faithfully,

A. E. AUSTIN,

F.A.L.P.A.

Kingsbury, N.W.9.

Practical Points

All questions for consideration should be addressed to "The Managing Editor, The Journal of Planning Law, 3 Chancery Lane, London, W.C.2." The questions of subscribers only are answerable in the Journal. All questions should be submitted in duplicate. The Publishers cannot accept any responsibility for the correctness of replies.

309. *Claims on £300 million fund—Development charge—right to rebuild former cottages.*

We submitted an S. 1 claim in respect of the site of four small cottages which had a total cubic capacity of between 2,000 and 2,250 cubic feet. These were demolished under a demolition order about 1940. The District Valuer claims that no compensation is payable because the owner is entitled without payment of development charge to redevelop the site with dwellings having the above-mentioned cubic content, together with a tolerance of 7,500 cubic feet for each new dwelling. These cottages were flush with the road without even a footpath between them, and it is clear that any redevelopment will involve the setting back of the cottages, and that they will therefore have to be built on a new site. The cottages were two-roomed cottages, and any new proposals could not economically provide for the erection of more than two dwelling-houses in place of the four that were demolished. Will the owner be entitled to redevelop without payment of development charge, notwithstanding that the redevelopment is not on the exact site of the old cottages, and notwithstanding that the four cottages are to be replaced by two? [M. L. N.]

Answer

The tolerance of 7,500 cubic feet per house under the Development Charge Exemption Regulations has nothing whatever to do with Part VI claims and must be ignored. The only tolerance to be taken into account is that under the Third Schedule to the Act, *viz.*, for houses 10 per cent. of the original cube, or 1,750 cubic feet minimum.

The other questions are answered in paras. 15 and 17 of the Practice Notes. Each new building must be within the curtilage of a former building, but not necessarily on the same covered site. If there were four buildings, A, B, C and D and these are replaced by two buildings, the arrangement might be B plus tolerance in the curtilage of B with A added as garden ground, and C plus tolerance in the curtilage of C with D added as garden ground. Thus B plus tolerance could not be erected free of charge partly on B and partly on A. However, in view of what can be done free of charge possibly the charge for the latter would be very slight, if not nil. That, however, depends on the circumstances of that particular case. [W. A. L.]

310. *Claims on £300 million fund—liability to income tax.*

A builder, who has a building estate, is concerned as to the tax position under any payment that he may receive under the fund set up under s. 58 of the Town and Country Planning Act. Will this compensation, if and when received, be considered a capital payment, or will the tax authorities consider it to be income?

The builder points out that if an ordinary person sells a house and makes a profit, he is not taxable, but if a builder sells a house in the course of his business, then ony profit made is taxable. Would such an attitude be adopted towards compensation for depreciation of land values? [W. A. & Y.]

ANSWER

Where land is a fixed asset no tax is payable except in respect of interest for the period from July 1, 1948, but where land is held as a current trading asset (as in this case), the compensation is a trading receipt, but it should not be included in the return before Parliament approves the scheme. The fact that compensation is not considered a capital payment, will probably be offset by the reduction in the value of the land. [R. P. C.]

311. *Compulsory acquisition—position of monthly tenant.*

A is the monthly tenant of a house and shop. The business has been in existence for more than 5 years and he has built up the business of a tobacconist and confectioner.

The local authority have served A with notice of a compulsory purchase order made under the Education Acts, 1944 to 1948, and the Acquisition of Land (Authorisation Procedure) Act, 1946, and A has lodged notice of objection on the grounds that the order would deprive him of his livelihood and his home. The local authority have approached him to ask if he will withdraw his objection as in fact several of the objections made have been withdrawn and it is unlikely that a public inquiry will now be held.

The local authority served A with notice of the order before they knew that he was a tenant with a tenancy of less than a year. Are they bound to serve A with notice to treat if the order is confirmed by the Minister? Has A any right to claim compensation against the local authority for disturbance and loss of trade? His tenancy is protected by the Rent Restriction Acts. [J. T. M.]

ANSWER

It seems that A will be a "party interested" under s. 18 of the Lands Clauses Consolidation Act, 1845, and should be served with notice to treat unless it is intended to give him a proper notice to quit and wait for that to expire. As A is a protected tenant, however, the local authority will presumably wish to serve notice to treat, and A will then be entitled to compensation on the basis of s. 121 of the 1845 Act. [J. F. G.]

312. *Development charge—liability for part of premises leased —change of decision by Central Land Board.*

We are acting for a company, which owns a small aerodrome, and prior to the coming into force of the Town and Country Planning Act, 1947, parts of the aerodrome hangars had been let off to three or four tenants for businesses which have no connection as such with the owners' business.

In 1950, one of the tenants wished to take over a building which had been used as a squash court during the occupation of the aerodrome by the Royal Air Force, and had not been used after the aerodrome had been de-requisitioned. An application was made for the usual planning consent which was granted, and on receipt of a communication from the Central Land Board, we wrote contending that no development charge was payable, as the whole aerodrome was still being used for the same purposes as before the Act came into operation, and that the cubic content of the squash court in relation to the rest of the buildings was infinitesimal.

We then received a letter from the Central Land Board agreeing that no development charge was payable, but they have now written stating that it was not pointed out to them at the time that the squash court was being converted for use by a lessee, and that they thought that the premises were going to be used by the owners, and that as the premises are to be used by a lessee, a development charge will be payable. They are asking the owners to complete form D.1.

A further application is being made for planning consent to convert two buildings which were formerly used as store huts for use by a new tenant, and the Central Land Board are contending that a development charge will also be payable in respect of this change of user.

We would be grateful if you could advise us (1) whether you consider the Central Land Board's contention as to change of user and the assessment of a development charge generally is correct, and (2) whether having had a determination that no charge was payable, and therefore having entered into a new lease with their tenants and so entered into certain commitments, the owners can be faced with the position that the Central Land Board are now altering their decision with all the consequences that may flow therefrom. [W. B. & J.]

Answer

Apparently if the owners had first changed the use and then let, the Board would have been satisfied with " no charge "!

There is, however, substance in the view that when the whole of a building, group of buildings, or area of land is in one occupation, changes can be made in the use of parts of the building, one or more of the group of buildings, or part of the area of land without materially altering the general character of the use of the whole; but when separate occupations arise the unit of consideration is the premises let and in relation to this more limited unit the change may well be material. See also art. 3 (2) of the Use Classes Order, SI 1950, No. 1131, and [1951] J. P. L. 175 (use of additional room in a dwelling-house for purposes of a bank).

As regards revising a determination already made I do not think the Board can be bound by a decision arrived at on inaccurate information or misleading statements (however innocent) as opposed to a misinterpretation of accurate information. Since the Board can ask for any information they require, it would seem unlikely they could shelter behind incomplete information. The correspondent's statement as to the use of " the whole aerodrome " may have been misleading.

The person primarily liable to the Board is the person who has carried out the development, *i.e.*, the tenant, and the owner is only involved as between himself and the tenant. [W. A. L.]

313. *Development charge—owner's doubtful title.*

A client of ours has occupied a vacant piece of land since 1937 without having any legal title to it.

He has just received a planning permission limited to a period of five years for the storage of motor vehicles, the reasons for the limited permission given by the authority being that the property is within an area predominantly residential which it is proposed to zone for residential purposes, and that the conditions are necessary in order to protect the amenities of the area.

In negotiations concerning the development charge, the District Valuer maintains that no consideration can be given to the fact that our client has an unsatisfactory title. But it may well happen that the legal owner could evict him from the land as soon as the development charge has been paid, in which case very great hardship would result to him.

We should be glad to have your views as to whether the unsatisfactory nature of our client's title should be reflected in any development charge that may be assessed. [S. A. H. & C.]

Answer

I must agree with the District Valuer here, as development charge is assessed with reference to the difference between the restricted value of the land, and the value of the land with the benefit of the particular planning permission; the particular legal (or equitable) interest which the developer may have in the land at the time is immaterial. A lessee from year to year must pay the same development charge (subject to agreement with his landlord) as a fee simple owner would have to pay in respect of the same development, and a squatter is, in my opinion, in exactly the same position. The applicant should avail himself of s. 72 (2) (*b*) of the Act to have development charge determined for successive periods of say six months. [J. F. G.]

314. *Requisitioned land—claims for reinstatement and development value.*

A piece of land, requisitioned and used for defence positions during the war, now lies derelict with large excavations and waste materials from the emplacements. A dwelling-house was commenced in 1939 and the plot is now required by the owner for building again.

A Part VI claim has been agreed—restricted value £20, unrestricted value £250.

A claim of £187, based on a proper estimate, has been made on the War Department in respect of the reinstatement of the site, but they will only admit £20—the restricted value. The District Valuer advises the utilisation of the provisions of s. 75 (3) (*a*) of the Act of 1947.

It is understood that the Planning Payments (War Damage) Scheme, 1949, is operative in a case such as this, but the intricacies of the matter are extremely difficult to follow and your advice therefore would be greatly appreciated. [M. L. C.]

ANSWER

It is assumed that the land was requisitioned on the appointed day and that the Part VI settlement has had regard to s. 89 (1).

The owner will receive payment in respect of his claim of £230 under Part VI of the 1947 Act, and £20 under the Compensation (Defence) Act, 1939. Except, therefore, as to any deficiency in payments under Part VI by virtue of the scheme to be made under s. 58, the owner will receive the full value of the land (as owner he will still be responsible for weeds and nuisances on the land, so that even at £250 his compensation would not be complete).

S. 75 (3) will help if the planning authority can be persuaded to serve an enforcement notice. The owner will then be entitled to the cost of clearance less the £20 received under the 1939 Act. The authority will no doubt wish to consider para. 10 of the Schedule to the Requisitioned Land and War Works Act, 1948.

As regards development charge the questioner says the building was commenced in 1939. It may be, therefore, that s. 78 applies. On the other hand, the settlement under Part VI seems to indicate that s. 78 has not been applied. Also s. 80 may have been applicable or it may have been possible to claim benefit as a single plot owner. [W. A. L.]

THE JOURNAL of PLANNING LAW

Published by

SWEET & MAXWELL, LIMITED
2 & 3 CHANCERY LANE, W.C.2

On the First of Every Month
Subscription: £1 10s. 0d.

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"Planning Law" Notes

The Minister of Local Government and Planning has now confirmed the Designation Order for the Lake District National Park made by the National Parks Commission on January 30, 1951. The designated area comprises approximately 866 square miles situated in the counties of Cumberland, Lancaster and Westmorland.

Five objections were made, mainly about the inclusion of farming and forestry land and land containing mineral workings.

As in the case of the Peak District National Park, the Designation Order for which was confirmed previously (see [1951] J. P. L. 255), applications for permission to develop land within the area should continue to be sent to the offices of the appropriate local authority pending the setting up of a joint planning board as the planning authority for the Park.

An explanatory memorandum on the Town and Country Planning (National Coal Board) Regulations, 1951 (summarised at [1951] J. P. L. 340) has been issued by the Ministry of Local Government and Planning and Ministry of Fuel and Power, and is obtainable from H.M. Stationery Office, price 6d.

The Advertisements Regulations, 1948 (SI 1948, No. 1613), granted permission for the continued display of advertisements existing on August 1, 1948, subject, after a period of grace, to the power of the local planning authority to require an application for express consent to be made (reg. 7).

The extended period of grace in the case of advertisements which were displayed on January 7, 1947, and August 1, 1948, a period of three years, will expire on July 31, 1951. Thereafter, all advertisements will be subject to challenge by the local authority.

A reply to a parliamentary question on this matter is noted at p. 411, *post*, and an article on control of advertisements is printed at p. 382, *post*.

The proposals of the City of London Corporation for rebuilding the City have been published in the form of a book *The City of London: a record of destruction and survival with a report on reconstruction by the planning consultants*, by C. H. Holden, Esq., and W. G. Holford, Esq. The book, price 25s., is published by the Architectural Press on behalf of the City Corporation.

Mr. J. K. Boynton contributes the following note: I see that the view that the essence of an offence under s. 24 (3) is the failure to comply with an enforcement notice, not the development of land without planning permission (a view which I expressed at [1949] J. P. L. 357), has been confirmed by the High Court decision of *Perrins* v. *Perrins* (1951), 1 P. & C. R. 457.

Some people have been in the habit of serving a fresh enforcement notice to found court proceedings under s. 24 if the old notice was more than six months old, but I agree with a recent suggestion in the *Justice of the Peace* that this results from a mistaken view and that the six months' rule does not apply. It is interesting to see in the *Perrins Case* that the Court proceedings were in fact not taken until after the six months' period, and this confirms the view that proceedings under s. 24 for a penalty are in respect of a continuing offence.

Enforcement notices seem to be in the news just at present, particularly in relation to "existing contravening development", *i.e.*, development carried out in contravention of the planning control existing under the pre-1947 Act legislation. This is, no doubt, largely due to the expiry of the three-year period in the proviso to s. 75 (1) of the Act of 1947 on June 30, 1951, and the expiry of the five-year period under the Building Restrictions (War-Time Contraventions) Act, 1946, on March 26, 1951. No doubt, many authorities have hastened to serve enforcement notices lest they be precluded from so doing by these statutory limitations. An article on enforcement procedure was published in our last issue ([1951] J. P. L. 318), and the question of possible liability to development charge after the statutory period was discussed in the article at [1951] J. P. L. 280, and commented upon at [1951]

J. P. L. 323. In this issue further points are raised in relation to these matters (*post*, p. 399), confirmation of *Higham* v. *Havant U. D. C.* is reported (*post*, p. 416), and an important opinion of the Minister relating to development commenced before April 1, 1933, is mentioned (*post*, p. 402).

We are given to understand that the Earl Fitzwilliam's Wentworth Estates Co., Ltd., have decided to lodge an appeal to the House of Lords against the dismissal by the Court of Appeal (Somervell and Singleton, L.JJ.; Denning, L.J., dissenting) of their appeal against the judgment of Birkett, J. (as he then was). This appeal raises questions of fundamental importance in relation to the powers of the Central Land Board. The case is fully reported in 1 *Planning and Compensation Reports* at pp. 169, 429.

The Control of Advertisements Amendment Regulations, 1951 (printed *post*, p. 410), amend the principal regulations and among other matters allow the flying of a "house" flag (under certain conditions) with the name or device of the occupier inscribed thereon. See hereon M.L.G. & P. Circular No. 45/51.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Journal. They should be sent to the MANAGING EDITOR, *Journal of Planning Law*, 3 CHANCERY LANE, LONDON, W.C.2. *Every attempt will be made to return drafts or unsuitable copy but no guarantee can be given in this respect.*
Books for review should be sent to the Publishers at the above address.

What is Amenity?[1]

Except perhaps for "development", "amenity" is the hardest-worked word in planning language. In some form or other, amenity introduces itself into almost every planning proposal, and its protection, or enhancement, is now recognised as one of the main purposes of planning legislation. Yet the actual word occurs only four times in the 1947 Act, and then only in sections[2] dealing with special subjects—the discontinuance of uses and removal of buildings, the preservation of trees and woodlands, the control of advertisements, and the proper maintenance of waste land. In spite of this, concern for amenity underlies all modern planning administration and is necessarily one of the Ministry's main preoccupations.

Amenity is defined in the *Concise Oxford Dictionary*, as "pleasantness" and pleasantness in its turn as what is "agreeable to mind, feelings or senses". Modern planning usage has stretched the word amenity—perhaps rather unfortunately—to denote personal convenience, so that the convenient arrangement of different but interdependent uses of land (for example, shopping and housing) or the provision of a service such as a public lavatory is called an amenity. For the purposes of this chapter,[1] the word may be taken to express that element in the appearance and layout of town and country which makes for a comfortable and pleasant life rather than a mere existence. It is the quality which a well-designed building estate or neighbourhood will have and which streets of solid but uninspired "bye-law" housing conspicuously lack.

In considering any application for permission to develop and any proposal to be included in their development plan, every local planning authority must take into account the "interests of amenity" as well as the various competitors for land.[3] Public opinion not only accepts but insists that pleasantness and convenience must be major considerations in determining whether a particular use of land is "right". Opinion is less clear, however, when it comes to determining what *is* pleasant—or even what *is* convenient. Each person's idea of amenity inevitably depends upon his individual taste; what is disagreeable to the " mind, feelings or senses " of one seems harmless to another. While one person may find it inconvenient to be more than ten minutes distant from shops, public house or cinema, another may think ten miles too short. The solitary shop in a residential street is an obvious example of the arguable case: planning opinion has hardened against it on the ground that it can carry only a limited stock and that having to visit it as well as other shops wastes the housewife's time; but many people think the odd shop next door a great convenience. In considering questions of amenity, the local planning authority have to assess public opinion as accurately as they can, and, in each case, to weigh the extent of any injury to amenity against the usefulness of the proposed development.

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[1] This account of "Amenity" is reproduced from Minister of Local Government and Planning's Progress Report, entitled "Town and Country Planning 1943–1951", to which reference was made *ante*, [1951] J. P. L. 314. It forms the first part of Chapter X of that Report.

[2] Ss. 26, 28, 31, 33.

[3] These are described at some length in Chapters VII and VIII of the Report.

The following are cases in which the claim of amenity is fairly clear, though the decision on each must turn on the balance of conflicting interests: the disturbance of a residential area caused by noise from a saw mill or a repair garage, by the smell or flies from pig sties, by dust or smoke from industry, or by the general bustle created by the establishment of a business; the spoiling of a stretch of country by ugly houses or perhaps by any houses at all; the erection anywhere of a badly designed or badly sited building, unsightly in itself or unneighbourly; the alteration or destruction of a particularly charming or interesting building[4]; any development likely to concentrate traffic in places where there is not enough room to take it comfortably; failure to provide enough shops, schools and open space to serve the neighbourhood; the felling of trees, even though mature, with no provision for replanting; advertisement hoardings in unsuitable places. Anything ugly, dirty, noisy, crowded, destructive, intrusive, or uncomfortable, may " injure the interests of amenity " and, therefore, be of concern to the planning authority.[5]

There are other cases in which a plea for the protection of amenity seems to the Ministry less clearly justified. For example, it is sometimes held that people should not be permitted to carry on an occupation in a private house, not because it is noisy or intrusive, but simply because it is an occupation and the mere fact of it may affect the "high class" character of the neighbourhood. This is a very dubious argument. Or there is the solitary new house in the country which local planning authorities have sometimes refused to allow on the ground that any house will inevitably spoil the amenity of the district. There were more appeals to the Minister in 1950 about the erection of houses in country districts than about any other matter. There may well be reasons other than the effect on amenity why a new house should not be allowed in some stretches of country, but some local planning authorities do seem to interpret a "threat to the amenities" much too rigidly. In the *Notes on the Siting of Houses in Country Districts*,[6] which the Minister sent to local authorities in February, 1950, it was said that "the effect on the appearance of the countryside depends on the siting and design of the particular dwelling. Generally, the authority should hold themselves free to refuse any application which seems likely to spoil a fine stretch of countryside; but the fact that the countryside is fine would not, in the Minister's view, justify the refusal of permission if the proposed building would not appear an intrusion on the landscape. . . . Good houses, well sited, should be looked upon as a permanent addition to the wealth of the countryside".

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[4] Ss. 29 and 30 of the 1947 Act are designed to prevent this.

[5] It is however sometimes difficult to decide whether minor offences against amenity should more fittingly be dealt with by planning legislation, by the law of nuisance or by local bye-laws.

This leads to some consideration of the stock phrase "injurious to the interests of amenity". In a circular[7] issued in March, 1949, on the subject of planning appeals, the Minister suggested that general phrases such as "the proposal is contrary to sound planning principles" convey little meaning and should not be used. The same is true of the phrase "injurious to the interests of amenity". People have a right to know as precisely as possible what the local planning authority consider to be unpleasant or inconvenient in any particular proposal. Will it be ugly or dirty or noisy? Whom will it disturb? What will it disfigure or affect? If they are told, they are more likely to accept a refusal of permission with a good grace, or to modify their proposals, rather than resort to their right of appeal to the Minister.

Amenity and the Work of the Ministry.

Unfortunately, the preservation of amenity is not always a matter of ensuring that planning authorities have adequate powers and use them wisely. It is often linked with the much more deeply rooted problem that in a small, thickly populated and highly industrialised country, whose future depends on its ability to use its material resources to the full, there must often be a clash of interests over the use of land. When this happens, the Ministry's part is often an ungrateful one. Because the Ministry is responsible, among other things, for protecting natural beauty, too many people have the impression that this is its chief—or indeed only—function. This view is clearly at variance with the Minister's duty to secure the right use of land in the national interest. In a larger country, with fewer people to the square mile, and less exercised by problems of defence and increased industrial and agricultural output, it might be possible for most conflicts over the use of land to be decided without loss of natural beauty; in England and Wales, at the present time, that is unhappily not possible. This is not always clearly enough understood, partly because planning developed historically from the desire to secure greater amenity in urban development, and partly because amenity, unlike other interests in land, has no other department to champion its cause. As a result, it is often suggested that a decision to allow development which will be unpleasant is a "defeat for planning", whereas all that it in fact represents is a decision that, in the particular case, the amenity interest is not the strongest in the field. Well-known examples are decisions to allow power stations or oil-refining plants in pleasant localities which some people want to see either left clear or developed for other purposes; mineral working in the country; reservoirs in rural valleys; service training over moors or on the coast; gas-holders within general view; industry in residential areas. Opinions will always differ whether, in such cases, the need for the particular development in the particular position is in fact greater than the need for amenity; but while anyone may disagree with a particular planning decision, it ought to be recognised that these *are* planning decisions taken on the view that the development in question represents the right use of the land.

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[6] See [1950] J. P. L. 271.

[7] Ministry of Town and Country Planning Circular No. 69, dated March 17, 1949. See [1949] J. P. L. 321.

The attitude that such decisions are "defeats for planning" is due mainly to the fact that amenity and convenience are both matters which closely concern the individual, and which he is able to appreciate as he cannot always appreciate the needs of, for example, industry or service training. He may well feel that these needs could be met somewhere else; sometimes he may be right, but where the development is needed urgently, investigation of possible alternatives may be a very difficult and protracted business, and the Ministry, in trying to determine what seems the right use of the land, cannot ignore the urgency. This has been particularly so in the last few years when economic and strategic considerations have been of exceptional importance. It is also true that many of the largest projects, which by their nature are the most likely to be unpleasant, are either carried out by the Government or by one of the socialised industries, or sponsored by the Government; and the individual is apt to assume that if these developments are allowed to override considerations of amenity it is because some other department has been able to override the Ministry. In fact, such large and intrusive development as power stations, training grounds and reservoirs are almost bound, in a crowded island, to "injure amenity"; and the question must often resolve itself into reducing the injury as much as possible. The best hope lies in trying to foresee what major development is likely to give offence unless very carefully sited, so that possible alternatives can be investigated in time. The Ministry has arrangements for consulting the various departments concerned in an effort to secure this.[8]

Even though the protection of amenity cannot be the Ministry's only role, it is one of the most important. Aesthetic questions bulk large in almost all branches of its work; in particular, many refusals of permission to develop, which lead to appeals to the Minister, are made on grounds of amenity. The New Towns are themselves essays in amenity, and in the replanning of damaged and blighted areas of existing towns, and in the framing of development plans for country and town alike, the fundamental requirements are those of amenity—pleasant and convenient living conditions, a decent amount of open space and proper facilities for recreation.

[This chapter in the Progress Report continues with an account of amenity in relation to preservation of trees and woodlands, preservation of buildings, control of advertisements, camping and caravanning, and design and external appearance of buildings. National Parks, footpaths, and public access to land are dealt with in Chapter XI of the Report.]

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[8] These arrangements are described at greater length in Chapters VII and VIII of the Report.

Advertisements and Town Planning

By Patrick Stirling, Barrister-at-Law.

Expiry of period of grace.

The period of grace given by the Town and Country Planning (Control of Advertisements) Regulations to advertisements in existence on January 7, 1947, other than those specifically exempt, will expire on July 31, 1951. After this date they may continue without express consent, subject to the power of the local planning authority to challenge them and to require application to be made for such consent. In the case of other advertisements in existence on August 1, 1948, the period of grace has already elapsed. It was recently disclosed that 2,116 appeals were dealt with between August 1, 1948, and the end of 1950, of which 662 were allowed and 1,126 dismissed; these figures may give an indication of the size of the problem which can arise as soon as this protection which has existed for a very large number of advertisements is removed.

While indiscriminate advertising in the past has damaged the appearance of our cities, few—if any—local authorities would wish to condemn all outdoor advertisement as bad. Local authorities will, therefore, have to carry out a careful review of the principles of control from the standpoint of amenity and public safety, and are required, in the interests of amenity, to determine the suitability of the use of a site for the display of advertisements in the light of the general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest. In carrying out this duty, there appear to be three interests for the local authority to consider : (*a*) the person or body that wishes to advertise; (*b*) the business which undertakes the manufacture and display of the advertisement; and (*c*) the public. The problem of advertisement control will consist in balancing the interests of these three parties and of harmonising the requirements of advertising with the interests of civic design, aesthetic quality, amenity, and public safety.

Classification of areas.

As experience in control is gained, it may be found that applications for the consent to the display of advertisements fall into three main categories and relate to: (*a*) areas from which all advertisements (other than those for which specific provision is made) should be excluded; (*b*) areas in which advertising, subject to the standard conditions, can be expected to continue as at present; and (*c*) areas from which it would be unreasonable to exclude all advertising but in which the amenities require special protection; and it is in respect of this last category that the greatest difficulty can be expected.

Local planning authorities will no doubt define some areas of the first category as areas of special control, and submit the necessary order to the Minister for his approval. In addition to areas of special control, the amenities of residential areas should be given the maximum protection possible. In long-established urban areas an unfortunate and haphazard intermixture of industry and housing development has grown up and the regulations will permit advertisements, within certain limits, that relate to the business carried on, while nameplates and announcement boards are permitted for hotels, clubs, doctors' houses and similar establishments. Apart from these considerations, advertisements are out of keeping with residential areas and an example of this may often be found where the flank walls of houses are used as advertising stations and destroy the architectural merits of the neighbourhood.

Business and industrial areas, on the other hand, are centres of attraction for the public and, consequently, are attractive for advertising purposes and, speaking generally, they may be said to be most suitable for the display of advertisements, although the situation of these areas in relation to open spaces, precincts and other features must be considered. The local planning authorities will no doubt co-operate with the trading interests concerned and encourage, where possible, the formation of street groups to consider the preparation of overall and coherent design.

There are, in addition, a number of areas throughout the country from which it would be unreasonable, in present conditions, to ban all advertising, but which merit a special degree of protection. It is in these cases that the problem of control will be most difficult. These areas may be focal points of interest with national features or historic buildings or, again, consist of groups of buildings of architectural charm which should not be allowed to become areas for general advertising. The problem is twofold. Numerous complaints may have been received in the past about advertisements in these areas which have offended the public and which can, after August 1, be brought under control and either removed altogether, or made to conform to certain conditions: at the same time applications are being received for consent for new advertisements. If the planning authority is to win public support for its control it would be wise to dispel any suggestion that it is setting itself up as an arbiter of public taste, and should devise some yardstick—however difficult this may be—against which old and new can be judged, and which is capable of being appreciated and understood by the public and justified at a public local inquiry. The advertisements under consideration are, in the majority of cases, subsequent additions to the building and have little regard to its design. It may, therefore, be found that it will be necessary to decide, in each area, certain points of principle as to limitations in size and height above the ground, and the desirability or otherwise of allowing general advertising stations. It is appreciated that difficulty will arise, and in particular in the case of flat signs on buildings where a main consideration is the relationship of the sign to the elevation of the building. The question of scale is of great importance and it will no doubt be rightly pointed out that the same size of sign in relation to two buildings of different proportions may give totally different effects. The sign may destroy the general architectural balance of the small building, but might not harm the design of the larger. Material considerations in preparing such a yardstick will, no doubt, include such factors as the height of existing buildings and their visibility from adjoining open spaces and processional routes, the nature and proportions of any national features, the height of historic monuments, and the architectural merits of the surrounding property.

Effect of Existing Advertisements.

Two final points may be added. Local authorities are precluded from imposing any condition which might amount to a censorship of the subject matter of any advertisement. Secondly, in deciding questions of amenity, the local planning authority must consider the general characteristics of the area and may disregard existing advertisements. Where existing advertisements have already destroyed the amenities of a locality, their presence will be no excuse for the introduction of new advertisements. It will, no doubt, be the aim of local planning authorities in controlling these advertisements, to create as little disturbance as possible while preserving and developing the amenities of our country. It has recently been announced that the Minister of Local Government and Planning is anxious to see fewer appeals and believes that this can be brought about by establishing better and closer contact between local planning authorities and advertisers. Where an application is refused he declares that it is important that the authority should give specific reasons for their decision and, similarly, when an authority are challenging an existing advertisement he hopes that they will specify the respects in which they consider it dangerous or offensive to amenity. It is thus hoped to establish good relations between authorities and the industry through a better understanding of each other's point of view.

Planning Control of Moveable Dwellings[1]

By A. G. W. Boggon, LL.B., L.A.M.T.P.I.,
Deputy Town Clerk of the County Borough of Gloucester

The desperate housing need throughout the country has led many authorities to consider—and, we are told, some to put into operation—ordered sites for caravan dwellers. However, this article is concerned not with the establishment of a caravan site, but with the disbandment of an existing unsightly and disordered compound.

In spite of the times it may be felt still to be incumbent upon a progressive local authority to give remedial consideration to shack dwelling.

Until the 1947 Act came into operation, authorities in general found their powers in the above regard, limited. The Gloucester County Borough Council has, however, invoked in aid of the law of nuisance the powers contained in s. 26 of the Town and Country Planning Act, 1947, and has received the Minister's confirmation of an Order made under that section. This may be the first confirmed s. 26 Order in the country, and it is thought that it is certainly such in relation to caravan sites.

In the first place it is necessary to say a little about the site in respect of which remedy has for long been so needed.

From 1930 onwards, and in haphazard fashion, there arrived on a large piece of land on the fringe of the commercial area numbers of families who established on that land, in equally haphazard fashion, residences of one sort or another. These comprised sheds, caravans, tents, lorries and old 'bus bodies on and off wheels. The area reached its maximum capacity about the outbreak of war and has been maintained at that level ever since. A certain number of the residents moved away seasonally to participate in agricultural operations such as fruit and hop picking, whilst others also moved seasonally in connection with fairs and amusements. The balance, however, resided on the site more or less permanently and either worked in the City or pursued unauthorised employment on the site itself as, for example, by the setting up of scrap metal dealing or wood chopping.

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[1] This article was originally published in *The Municipal Journal* and is reprinted by kind permisson of the Editor.

The owner of the land evidently charged these residents a weekly sum for the right to station their "moveable dwellings" on his land, but neither the owner nor any of the residents possessed a licence under s. 269 of the Public Health Act, 1936.

Perhaps the Gloucester County Borough Council might have taken action under s. 269 (2) of the 1936 Act, for a fine under sub-s. (7) but, of course, as most local authorities know, there are difficulties inherent in sub-s. (3) of that section in particular, and there is also the difficulty in what has become known as "the 100 yards move".

S. 5 of the Town and Country Planning (Interim Development) Act, 1943, enabled enforcement control in relation to unauthorised "development" of land to be carried out where such arose after the commencement of that Act. The "development" of the land in question had, as stated, commenced in 1930 and, therefore, no powers were then available to the County Borough Council, no operative scheme being in existence. The remedy only arose as a result of the 1947 Act.

It is often pointed out in connection with enforcement action under the Town and Country Planning Act, 1947, that a principal prerequisite is that what is proposed to be enforced, must relate to "development" as defined in s. 12 of the Act. The Council took the view that what had occurred on this land did constitute "development" and, by reason of the confirmation of the Order by the Minister, the Minister has obviously upheld them. The title to the Order itself is "The County Borough of Gloucester Authorised Development Discontinuance Order, 1950". It is, however, an interesting line of thought to consider in the application of s. 26 of the 1947 Act whether or not (distinguishing itself from s. 23) the use of land which may not legally constitute "development" is not also capable of being caught by the section. It is not proposed to do other than mention very briefly that s. 26 is contained in Part III of the Act the heading to which is "Control of Development, etc.". Whilst, obviously, the abbreviation, "etc.", refers also to a number of other sections contained in Part III, the relation to s. 26 is emphasised. Furthermore, the title to s. 26 itself reads "Powers relating to authorised uses" and whilst Parliament obviously intended the section to enable the termination of that type of development which was authorised as opposed to unauthorised, it may also, it is thought, relate to uses of land which are not " development " at all.

It has been said that licences had neither been applied for nor granted in pursuance of the Public Health Act, 1936. It is also true that no permission had ever been granted under planning law, and, if what had taken place throughout the years constituted " development ", then by reason of the fact that the development was first established before " the material date " for the purpose of the 1932 Act, it was " authorised " development and could be remedied by s. 26 alone.

The land was surrounded on two sides by dwelling-houses, the residents of which had, from time to time, been loud in their complaint of the nuisances emanating from the use of the site. Most urban authorities have to face complaints from residents arising out of non-conforming uses instituted and operations conducted in their midst. Examples common to authorities come to mind in connection with businesses which have been established in residential areas where, for instance, people are awakened by the noises of milk lorries leaving premises in the early hours of the morning, or where people suffer the bangings and clangings—not to mention smoke, dust and smell—from small factories and industries adjacent to their doors. Councils usually find themselves impotent in this regard, except by persuasion. The compensation facing councils in removal is generally a deterrent. Authorities usually, however, review their powers under Part III of the Public Health Act, 1936, or under their special local Act provisions in connection with the abatement of statutory nuisances. Owing to the fact that most industrial concerns can usually plead that they have used the best practicable means to reduce the inconvenience, proceedings are rarely taken. Action, of course, is, under the law of tort, usually open to the aggrieved parties themselves but they, in turn, are deterred by cost and invariably complain that, as ratepayers, their interests are not being looked after by their respective local councils who should " do something about it ".

S. 26 action under the Town and Country Planning Act may be said to be complementary to the law of nuisance and enable a local planning authority itself to take action, not merely in the interests of good planning in general but in the interest of aggrieved individuals in particular.

Returning to the particular action taken by the Gloucester County Borough Council, following the making of the Order, a public inquiry was held before the Minister's inspector and, in due course of time, the Order was confirmed. The effect of the Order was that after the service of notices upon the owner and occupier of the land and all residents and the expiration of the period therein referred to (being itself the period prescribed by the Order), any person who used the land for the purposes prohibited by the Order became liable to a most substantial fine and the continued use of the land for the purpose prohibited, rendered the user liable to another substantial daily penalty.

There are two further points meriting close attention and they relate to s. 26 (7) and s. 27 (1).

S. 26 (7) in general terms infers that there is a re-housing obligation towards any person who will be displaced from the land affected by the Order. This, of course, would almost certainly always be so if s. 26 were in a particular case used to put an end, for instance, to an established business in a residential zone where persons were residing on those business premises. In the case of a caravan compound, however, it is considered that, in general, there is no re-housing obligation. The sub-section referred to states that if the requirements of an Order will involve the displacement of persons residing "in any premises", then it shall be the duty of the local planning authority, "in so far as there is not other residential accommodation suitable to the reasonable requirements of those persons available" on reasonable terms, to secure the provision of such accommodation in advance of displacement.

Two questions arise.

The first is in what premises do the persons reside if, indeed, they reside in any premises at all? The answer is that they reside in their respective caravans, tents, sheds, lorries, etc. Are these premises? Certainly in the case of much of the sub-standard accommodation (if the foregoing are their "premises"), they will not, in all cases, be displaced because the persons concerned can transport their accommodation elsewhere.

However, as in a case under s. 11 of the Housing Act, 1936, where there is no legal obligation to re-house persons removed as a result of a demolition order councils feel themselves morally bound to re-house, so, in the case only of those residents more permanently domiciled in the City, particularly on account of their livelihood being earned in City factories, the Gloucester Council has decided to provide alternative "units" of housing accommodation. The word "units" implies that the accommodation offered will not necessarily be the accepted standard of housing accommodation.

I feel a few words on the question of the compensation under s. 27 ought to be given. It has earlier been stated that, in the particular circumstances, neither land nor dwelling licences had been granted under s. 269 of the Public Health Act, 1936. By virtue of the Fourth Schedule to the Act of 1947, r. (4) under s. 2 of the Acquisition of Land, etc., Act, 1919, applies. That rule, it will be remembered, states :—

> Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to the public health, the amount of that increase shall not be taken into account.

Evidently, with this rule in mind, the owner of the land concerned has informed the council that he does not intend to avail himself of s. 27.

Lastly, the council intend that, upon this land, order shall take the place of disorder. In place of the assortment of sub-standard accommodation, including much of it of a sordid character, an agreement has been reached with the owner, the corporation and the Showmen's Guild whereby a part of the land will be set aside as a winter homing ground for showmen, the number of caravans will be strictly limited and will be set out in an orderly fashion according to a plan prepared. Adequate and appropriate water supplies and sanitary accommodation will be provided on the site and the site will be surfaced and laid out in a manner attractive to the amenities. There will be a resident caretaker on the site to ensure that order prevails. The remainder of the site will be cleared entirely and will be put to some use harmless to the amenities, to be agreed between the owner and the council.

Clearance Order v. Building Preservation Order

By H. A. H. WALTER, M.A., LL.B.

By a coincidence, the making of a building preservation order in respect of a particular house in Lincolnshire, which was already the subject of an operative demolition order, occurred while the Housing Bill was before Parliament in 1949. A new clause providing for the demolition order in such a case to be replaced by a closing order, was inserted in the Bill, and became s. 3 of the Housing Act of that year. It must be rare for a legal difficulty (attention to which was drawn in an article at [1949] J. P. L. 374) to be resolved so quickly.

But did Parliament and the departments concerned, now married in one Ministry of Local Government and Planning, give insufficient thought to the problem? At first sight it would appear so, for the new section deals only with the effect of preservation orders on houses subject to demolition orders; it does not mention the equally difficult question which may arise if the local planning authority make a building preservation order to preserve a building in an area which has been declared to be a clearance area under Part III of the Housing Act, 1936, and has subsequently been included in a clearance order. The omission may have been intentional, for there are fundamental differences in the procedure for the making of demolition orders under s. 11 and clearance orders under s. 26 of the Act. No Ministry is directly concerned with the bringing into operation of demolition orders. A demolition order concerns a particular house which is regarded as unfit for human habitation and cannot be rendered so fit at reasonable cost. When the order becomes operative the owner *must* demolish the house within a specified time, failing which the work *must* be done by the local authority at the expense of the owner. There is a right of appeal to the county court. If a building preservation order is subsequently made by the local planning authority and confirmed by the Minister the local authority *must* determine the demolition order and make a closing order instead (s. 3, Housing Act, 1949).

A clearance order, on the other hand, is made by the local authority and submitted to the Minister of Local Government and Planning for confirmation—the same Minister as is now charged with the confirmation or otherwise of building preservation orders made under s. 29 of the Town and Country Planning Act, 1947. Before the creation of this new Ministry, the Minister of Health was the confirming authority for clearance orders and the Minister of Town and Country Planning the confirming authority for building preservation orders. Inter-departmental argument might easily have arisen on this question. Now the Minister who has both functions might be placed in an extremely difficult position if he first confirmed a clearance order at the request of one local authority and was then asked by the local planning authority to confirm a building preservation order for a building in the clearance area. He might have to refuse to do so, even if advised that the building was one which should be preserved.

Assuming that the Minister is persuaded to confirm a building preservation order for a building in a clearance area, what is the legal position and which order will prevail? The question may be merely academic as regards future clearance orders but may arise acutely where there are buildings still undemolished under old clearance orders which were confirmed by the Minister of Health before the recent campaign to preserve interesting buildings. In such cases the Minister might regard it as his duty to confirm a preservation order but it is submitted that the Minister would be acting *ultra vires* in doing so. When the clearance order was confirmed by the Minister of Health or the Minister of Local Government and Planning that Minister would be *functus officio*; he has decided that the building in question must in due course be demolished. The Housing Acts contain no section permitting the Minister to rescind this decision, which must therefore stand in the absence of express statutory authority to alter it, and the question whether s. 29 of the Town and Country Planning Act, 1947, can be regarded as such express authority brings us within the difficult realm of the law relating to the interpretation of statutes. Parliament is presumed to know what it is doing and no Court may proceed upon the assumption that the legislature has made a mistake. It may, therefore, be assumed that Parliament, when passing the Act of 1947, was aware of the conflict and intended the later of the two Acts to prevail. The penal consequences of demolishing a house which must be preserved under the terms of a building preservation order would, no doubt, make the Court lean towards the validity of such an order when in conflict with a clearance order.

It has been argued that there is another reason for the preservation order to prevail, namely, that it is particular, while a clearance order is general and there is a *prima facie* presumption that particular provisions prevail over general provisions. But is a clearance order general? This may be doubted as both orders relate to particular buildings and notice must be served under Sched. III to the Housing Act, 1936, on every owner, etc., of any building in a clearance area to which the order relates.

Against the view that on the general rules of interpretation the later order must prevail it may be argued that if it was necessary for Parliament expressly to decide between demolition orders and preservation orders it is equally necessary for the same authority to resolve the conflict between the latter orders and clearance orders, for the same principles of interpretation apply. The cases on the interpretation of statutes nearly all refer to apparent inconsistencies in a particular statute or in statutes *in pari materia*, such as the Public Health Acts or the Finance Acts. It is difficult to find any guiding principles where there is direct verbal conflict in statutes relating to different subjects which were never intended to be read together.

To sum up, it appears that the Minister of Local Government and Planning must not without new authority confirm a building preservation order in respect of a building in a confirmed clearance order, and that if he purports to do so his action is *ultra vires* and could be upset by the Court, but that if this opinion is wrong then the Court must apply the ordinary rules of interpretation and must not allow an operative clearance order to prevail over a confirmed building preservation order of later date.

In county boroughs where the borough council is both housing authority and local planning authority it is unlikely that the problem will arise because the technical staff of the council will presumably explore the area thoroughly before preparing plans for a clearance area. It is in areas where the housing authority is the county district council and the local planning authority is the county council that trouble may be anticipated. The housing authorities in these areas should be careful to consult the local planning authority before making a clearance order and the Minister, if he is wise, will in future take the precaution of consulting the local planning authority before confirming a clearance order, and then the local planning authority could not easily make a case for a building preservation order, having failed to raise the issue before the clearance order was confirmed. The lists of buildings of historic or architectural interest now being issued by the Ministry will serve to guide both types of authority. These lists are comprehensive and to some extent astonishing for they include whole streets of houses which no one but an architectural expert would regard as anything but slums! In fairness to the Ministry's experts it should be added that most of the poorer property is in the supplementary lists and not the statutory lists of interesting buildings.

Progress of Development Plans

(*Continued from pp.* 229, 328, *ante.*)

The following is the list to date (June 21, 1951):—

7. Westmorland County Council.

Submitted to Minister: May 30, 1951.
(London Gazette, June 5, 1951.)

Local inquiry : No date fixed. (Closing date for objections, July 17, 1951.)

8. Wigan County Borough Council.

Submitted to Minister: June 6, 1951.
(London Gazette, June 8, 1951.)

Local inquiry: No date fixed. (Closing date for objections, July 25, 1951.)

9. Blackburn County Borough Council.

Submitted to Minister: June 21, 1951.

Local inquiry: No date fixed.

Expedited Completion of Purchase—Some Further Considerations

By E. S. Collins, LL.B., D.P.A., L.A.M.T.P.I.,
Assistant Solicitor, Stevenage Development Corporation

Mr. Barlow's article at page 272, *ante*, discussed the procedure as to the acquisition of land comprised in a compulsory purchase order applying the expedited completion provisions of the Sixth Schedule of the Town and Country Planning Act, 1944, as applied by the Town and Country Planning Act, 1947, or the New Towns Act, 1946. The present article seeks to draw attention to two further practical points which arise in connection with this procedure.

A. *How is title to be shown to land comprised in a vesting declaration?*

Normally, the authority acquiring land under the Sixth Schedule procedure will not subsequently sell any of the land, since even where redevelopment is undertaken by private developers, the latter will usually obtain only a leasehold interest, so that no question of showing title to the freehold will arise. Title would, however, have to be shown on application for first registration under the Land Registration Acts (*e.g.*, in an area of compulsory registration), and in the event of some of the land being redeveloped by a government department or similar public body, the authority may have to sell the freehold interest. The question therefore arises of what evidence of title the authority must be prepared to produce to the Chief Land Registrar or to subsequent purchasers.

The vesting declaration made under the Sixth Schedule operates to vest title in the authority (except as regards minor tenancies and long tenancies about to expire (defined in para. 1 (3) of the Sixth Schedule)), but, it is submitted, evidence must be provided to show—

(a) that the authority was in a position to make the declaration—this would involve evidence of—

  (i) the making and confirmation of the compulsory purchase order applying the Sixth Schedule provisions; and

(ii) the coming into operation of the compulsory purchase order; and

(b) that the vesting declaration had itself come into operation.

Strict proof of (a) (i) might be cumbersome, since it would involve proof of the relevant resolution, service of notices and production of original copies of the order and confirming order which are normally in the Minister's possession. It is suggested, however, that a certified copy of the confirmation order made by the Minister (which the authority would normally have) would in practice be sufficient, particularly as the validity of the order cannot be challenged after the expiration of six weeks from the publication of notice of confirmation (s. 16 (2) Town and Country Planning Act, 1944, as applied by the New Towns Act, 1946; para. 16 of First Schedule of Acquisition of Land (Authorisation Procedure) Act, 1946).

Evidence must, however, be adduced of the publication of notice of the confirmation of the order, since the last quoted sections provide that the order becomes operative on the date of publication, and a purchaser is entitled to ask for evidence thereof. It is suggested that this evidence might consist of a copy of the newspaper supported if necessary by a statutory declaration that it is one circulating in the locality in which the land in question is situated. This would also show that paragraph 2 of the Sixth Schedule had been complied with, and that the vesting declaration had not been made prematurely (see para. 3 (1) and (2) Sixth Schedule).

Evidence as to the operation of the vesting declaration ((b) above) is easily provided. A certificate given by the authority is conclusive (para. 3 (4) Sixth Schedule).

The authority's title would therefore consist of—a certified copy of the compulsory purchase confirmation order, the newspaper containing the notice of confirmation with statutory declaration where necessary, the vesting declaration (duly stamped) and the certificate of service of notice of the vesting declaration. Presumably, in order to show that the vesting declaration has been duly stamped, the authority must show the amount of the consideration—the certificates referred to at p. 276 of Mr. Barlow's article would seem to be suitable for this purpose.

It would be a prudent step to obtain the statutory declaration and the certificate of service at the time of the vesting declaration, in anticipation of a future sale, in case the persons concerned are not available when required in the future!

B. *Vesting Declaration and Registered Land*

If any interest in land comprised in the vesting declaration is registered, the authority must obtain a transfer from the registered proprietors in the prescribed form, since the vesting declaration of itself does not entitle the authority to be entered on the register as proprietor.

S. 19 (1) of the Land Registration Act, 1925, provides :—

> " The transfer of the registered estate in the land or part thereof shall be completed by the registrar entering on the register the transferee as the proprietor of the estate transferred, but until such entry is made the transferor shall be deemed to remain proprietor of the registered estate; . . .".

The Land Registration Rules, 1925, made pursuant to s. 144 of this Act contain the following:—

> "74. *Forms to be used*—The forms in the Schedule hereto shall be used in all matters to which they refer, or are capable of being applied or adapted, with such alterations and additions, if any, as are necessary or desired and the Registrar allows."
>
> " 98. *Form of Transfer.* A transfer of the land comprised in a freehold title shall be made by an instrument in Forms 19 or 20."
>
> (Rule 115 contains a similar provision as to transfer of leasehold land.)

In addition to making a vesting declaration, therefore, the authority must obtain a transfer (in the prescribed form) of any registered interests. If the amount of compensation is known, this can often be done quickly. But in most cases, the ascertainment of compensation will take time and the proprietor will be unwilling to execute a transfer before receiving the purchase money. In these circumstances, if delay is to be avoided, resort must be had to Rule 131 which provides—

> " Where the power of disposing of registered land has, by the operation of any statute or statutory power or by Order of Court or by paramount title, become vested in some person other than the proprietor (as, for instance, in the case of a deed poll executed under s. 77 of the Lands Clauses Consolidation Act, 1845 . . . or of a declaration express or implied vesting an estate made

> under any statute . . .) and the proprietor refuses to execute a transfer, or his execution of a transfer cannot be obtained, or can only be obtained after undue delay or expense, the Registrar may—
>
> (*a*) after due notice under these rules to such proprietor,
>
> (*b*) on production of the land certificate unless an order to the contrary is made by the Registrar,
>
> (*c*) on such other evidence as he may deem sufficient,
>
> make such entry in or correction of the register as under the circumstances he shall deem fit, for the purpose of vesting the registered land in the same person in whom the legal estate would have been vested if the land had not been registered."

The exercise of this power by the Registrar is discretionary, but it is thought it would be proper to ask for its exercise and for an order dispensing with production of the land certificate in the case where the authority wishes to obtain title immediately in order, *e.g.*, to grant a lease and a transfer cannot be obtained because the amount of compensation is unknown.

Where a vesting declaration has been made, therefore, search should be made in the Index Map at H.M. Land Registry to see whether title to any interests in the land has been registered, so that action can, if necessary, be taken to obtain a transfer, or to make application under Rule 131. If these steps are not taken, the authority's title will be incomplete in respect of the registered interests.

Old Contravening Development

By T. A. Blanco White, Barrister-at-Law

Two propositions in the June *Journal of Planning Law*, both relating to over-four-years-old development, seem to be open to dispute. Both must remain open unless and until the Courts decide them: the object of this note is not to assert that the views previously expressed were wrong, but to propound arguments to be used on the other side as and when occasion arises.

The first proposition (see *ante*, p. 319) is that a war-time contravention of planning control, declared to be such by a determination under the Building Restrictions (War-Time Contraventions) Act, 1946, could only be the subject of enforcement proceedings for four years after the development concerned took place—even though the 1946 Act allows longer than that for the making of such determinations. Now this would, on the face of it, be unreasonable. S. 75 of the Town and Country Planning Act, 1947, was clearly intended to substitute the five-year period laid down by s. 4 of the 1946 Act for the three-year period laid down by s. 75 itself, wherever the 1946 Act applied. But if the proposition under discussion were correct the effect would be, not that the five-year period applied in such cases, but simply that the three years given to local planning authorities for clearing up development contravening previous planning permission were not to be available where the 1946 Act applied. Indeed, not only is this an unreasonable interpretation: it has already been held by the Divisional Court to be wrong, since the argument here is precisely analogous to that which failed in the case of *Higham* v. *Havant, etc., U. D. C.* (1950), 1 P. & C. R. 281.[1] If, however, the four-year period of s. 23 does not apply, what period of limitation does apply? Apparently, the answer is: None. The making of a determination under the 1946 Act, that development was contravening development, apparently amounts to a final determination that the land must be restored to its original use. There is nothing very unlikely in this: indeed, the procedure for determination under the 1946 Act was clearly intended by the draftsman of s. 75 (2) to replace the normal procedure for appeal against an enforcement notice.

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[1] The Court apparently considered the case under discussion as even clearer than the case actually before them (that of pre-war development): see at p. 286. Their reasoning has now been unanimously approved by the Court of Appeal, *post*, p. 416.

On this view, then, provided any war-time contraventions are the subject of determinations under the 1946 Act within the five-year period that Act allows, the service of enforcement notices under s. 23 of the 1947 Act may be left until a later date.

My second point relates to development charges upon post-1948 contravening development that has survived for four years. The proposition here (see *ante*, p. 323) is: development charge cannot exceed the additional value due to planning permission, and therefore must be *nil* as soon as the developer can do without permission—*i.e.*, as soon as the time for enforcement of planning control against him has expired. Now this assumes that the Central Land Board can only assess development charge, in cases of retrospective planning permission, for the future and not for the past. Test it in this way. Suppose there is a temporary development, involving no capital outlay, and lasting only four years—a mere temporary change of use. A development charge for that development, assessed before it began, could well be at the rate of so much a year for the four years. Now suppose that planning permission is only obtained, and the Board are only asked to assess the charge, three years after the new use begins. Is the charge to be less than if it had been assessed at the start? Clearly not. So far as the application for assessment is concerned, it is tied to a planning permission authorising the continuation of the new use for one further year, so that strictly speaking only one year's development charge can be assessed upon it. But the Board would be entitled by s. 74 (1) to assess a charge not only for the "continuation" covered by the planning permission, but also for the "institution" of the use in contravention of s. 69. (They can add then a penalty, up to twice this last portion of the total assessment.)

In the same way, where development is more than four years old, the Board can assess a charge as if application for assessment had "duly" been made to them. But there is only one way of "duly" applying for assessment in respect of the carrying out of operations or the institution of a use, and that is to apply before development occurs: otherwise, there is a contravention of s. 69. But at the date when a charge would have been assessed upon an application duly made in that way, the planning permission did have value. In other words, s. 74 authorises the Board to impose any charge they could have imposed in the first place—plus penalties. Nor is any Court likely to strain the section to avoid this conclusion: any other construction would make illegal development far too profitable.

MINISTRY OF LOCAL GOVERNMENT AND PLANNING CIRCULARS

[*Continued from* [1951] J. P. L. 353.]

Circular No. 20, dated May 21, 1951. National Parks and Access to the Countryside Act, 1949. Survey of Public Rights of Way. Land Occupied by Service Departments. [4*d*.]

Circular No. 45/51. Town and Country Planning (Control of Advertisements) Amendment Regulations, 1951. [2*d*.]

Contravening Development Commenced Before April 1, 1933

By Harold J. J. Brown, ll.m., Barrister-at-Law

The Minister has recently expressed an opinion on a point of considerable importance where an enforcement notice is served in respect of a use commenced or works erected prior to April 1, 1933.

Under s. 75 of the Act of 1947, enforcement proceedings may be taken, subject to the time limit in the proviso to s. 75 (1), in respect of works carried out or a use commenced before July 1, 1948, in contravention of previous planning control, which is defined in paras. (*a*) and (*b*) of s. 75 (9) according to whether the land was at the time subject to (a) a resolution to prepare a planning scheme or (b) an operative planning scheme.

Where the land was subject to a resolution to prepare a planning scheme, the development is within para (*a*) if carried out " otherwise than in accordance with planning permission granted in that behalf by or under the interim development order ", and " interim development order " is defined by s. 119 (1) of the Act as meaning " an order made under s. 10 (1) of the Act of 1932 ". The question arises as to whether works carried out or a use commenced before April 1, 1933, when the Town and Country Planning Act, 1932 came into operation, is within the paragraph and so liable to enforcement action, notwithstanding that it was carried out or begun without permission after a resolution to prepare a scheme had been passed under the legislation in force prior to April 1, 1933.

In determining a planning appeal where the use in question had commenced in February, 1933, the Minister stated that although the area had at that date been subject to a resolution to prepare a planning scheme, he was advised that a use which began before April 1, 1933, could not be deemed to have been begun in contravention of previous planning control (Bulletin of Selected Appeal Decisions, IX/7; summarised at [1951] J. P. L. 232).

The Minister has now further stated that he " takes the view that s. 75 (9) should not be construed in such a way as to include within the scope of the section cases where no permission could have been obtained under an interim development order at the time the particular change of use was made. It was not until the passing of the 1932 Act that powers to consent to land use by interim development permission were taken, and, although uses of buildings were to some extent controllable under the earlier Acts, the fact that 'interim development order' is defined by s. 119 of the 1947 Act as meaning an order made under s. 10 (1) of the Act of 1932 seems to point to the conclusion that the legislature intended that breaches of interim development control occurring prior to the coming into force of that Act should escape enforcement action under the 1947 Act. They could, of course, have been dealt with by planning schemes under the 1932 Act without compensation, but that hardly seems a sufficient reason for inferring that the expression 'interim development order' is used in a different sense in s. 75 to that given to it in s. 119".

In *Higham* v. *Havant and Waterloo U. D. C.* (1950), 1 P. & C. R. 281 (noted at [1951] J. P. L. 58), the Divisional Court[1] held that a use of land which had been begun in contravention of a pre-1932 Act interim development order was liable to enforcement action under s. 75. In expressing the foregoing opinion, however, the Minister states that he has considered this decision, but so far as he is aware the attention of the Court was not directed in this case to the definition of "interim development order" in s. 119.

Thus on the Minister's view of s. 75 (9), a landowner will be able successfully to resist any attempt by the local planning authority to take enforcement proceedings if he can show that the development commenced before April 1, 1933, provided that no operative scheme was in force in the district; and this is so notwithstanding that at the time a resolution to prepare a scheme had then been passed under the planning legislation prior to the 1932 Act.

Many enforcement notices in respect of existing contravening development have recently been served by local planning authorities in view of the time limit in the proviso to s. 75 (1) of the Act of 1947, which has just expired. The persons upon whom they have been served have the right under s. 23 (3) both to appeal to the Court of summary jurisdiction and to apply for planning permission for the development, with right of appeal to the Minister. The former procedure is appropriate where it is alleged that the enforcement notice is *ultra vires*, as is the case if the development is not within s. 75 (9) of the Act. Should the foregoing interpretation not be accepted by the magistrates, they can be required to state a case for the opinion of the High Court. But, of course, an appeal to the Courts will not be necessary at all if the local planning authority can be persuaded to agree to this interpretation of s. 75 (9) (*a*), and it may well be that they will be prepared so to agree, especially in view of the right of appeal to the Minister against a refusal of planning permission.

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[1] The decision of the Divisional Court has now been affirmed by the Court of Appeal, *post*, p. 416.

Development in Barsetshire

Designation in Development Plan of Land as subject to Compulsory Purchase

S., a solicitor, is found interviewing C. his client (who is secretary of an estate development company).

C. This letter is the first we have heard about the proposal (*hands letter to S.*).

S. (*reads in silence*). I see the county planning officer tells you that he has received a request in respect of a site which you own for the designation of it as subject to compulsory acquisition for the purpose of providing a telephone exchange.

C. And asks whether we have any observations! I wouldn't mind giving him a few, but they would be unprintable! Why cannot the Post Office come and ask us if they can buy the site in the ordinary way of business, instead of this roundabout method?

S. The answer probably is that they don't intend to build for some little time. By following this procedure of "designation" as it is called, they can earmark sites for all their future requirements. This prevents the sites being used for other purposes until the Post Office are ready to go ahead. Of course, they are not the only public body who are entitled to use the procedure.

C. If you read that letter carefully you will see that I am not really given any chance to object at this stage. The last paragraph says something about my "no doubt being aware of my right to make representations when the submission of the development plan is advertised". Well, I am not aware.

S. It is not every local planning authority who are taking the trouble to consult owners of land before designating . . . .

C. (*interrupting*). The owner is the last person who is consulted these days. Your land is surveyed and measured and its future neatly arranged but *you* don't hear of it!

S. I am not defending all that public authorities do, of course. But here you are being asked for your views on the proposal that this land should be earmarked for a telephone exchange. There is no statutory obligation to consult you in this way. It could all be left till the development plan is published. Then you would have to make formal representations against the plan to secure any amendment. Under this procedure you can object now and also when the development plan is published.

C. Well I do object. This is a very good building site and we are hoping to be allowed to put up some good class dwelling-houses on it when the licensing position eases.

S. We can put that forward by letter to the county planning officer, although I am not sanguine what the result will be.

C. Why is that?

S. The local authority have to look at this question from the point of view of what is the correct use for your land. It is much easier to find plots for dwelling-houses than for telephone exchanges, or, for example, schools. I dare say that of the two competing uses, the public use will be regarded as the proper one.

C. At that rate no private individual will have a chance.

S. I don't agree. If a factory had a vacant plot earmarked for an extension, that would have a very strong claim to be regarded as the right use in the development plan. I suppose this letter is to draw forth any cases of that kind, and so reduce the number of possible objections to the development plan.

C. Our company own land in two counties and three county boroughs but no one else has approached us in this way. Should I write the other planning officers and ask them to notify me of any such designations?

S. I am inclined to think that you would just as well wait till their development plans are published. They have to advertise the submission to the Minister and local papers will certainly keep you in touch with the progress of the plan in their news columns. On the basic development plan map you will find a red inverted triangle thus (*draws on a pad in front of him*) for every designation map.[1] This will give you the areas where this earmarking has been done and you will only then have to look at the large-scale designation maps to see what property of yours is affected by these earmarking proposals. The designation maps will be on quite a good scale (1/2500) and will be accompanied by a written statement. This will tell you which authority will eventually acquire your property and for what purpose.

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[1] See Ministry of Town and Country Planning Circular No. 59.

C. I know something of our right to make representations against the development plan within six weeks. What happens if we fail and these designations go through. When can we expect a purchase?

S. The theoretical limit[2] is twelve years or in the case of agricultural land eight years. That is to say that if the land has not been acquired by those dates you can take steps to see that within six months it is either bought or freed from designation.

C. Surely it is grossly unfair that I should have to wait as long at that.

S. Those are the theoretical limits only. There are two practical lower limits of ten years and seven years[3] because the Minister should not approve a plan if acquisition is unlikely within those periods.

C. The periods are still too long to wait for purchase.

S. I am inclined to agree with you that it would be unfair in some cases if the local or public authority could have the virtual advantages of ownership without paying anything for it. Don't forget, however, that if you apply to develop the land, you may be able to force a purchase under s. 19 of the Act. Your application is bound to be refused whilst the designation stands, and you may then be able to show that reasonably beneficial use is impossible in the land's existing state.

C. That is certainly worth considering, because I imagine the land is virtually unsaleable once a designation falls upon it.

S. Yes, the Act itself really recognises that designation will damp any sale[4] and any purchaser who makes the usual planning enquiries is bound to find out.

C. Well I had better get my facts together on this particular case and write to the county planning officer. Incidentally, if I fail at this stage, and do not get the land removed from the development plan, I suppose I can fight to the last ditch and object to the actual compulsory acquisition?

S. Oh yes! but don't forget that you may find the Minister disregarding some of your objections at the stage of acquisition on the grounds that they amount to objections to the development plan.[5]

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[2] S. 9 of the Act and reg. 3, Town and Country Planning (General) Regulations, 1948.

[3] S. 5 (4), proviso (a).

[4] See s. 54 (3).

[5] See s. 45 (1).

And don't overlook the fact that some authorities use the whole procedure not to be awkward to you, but because it sometimes gives them a *power* of compulsory acquisition which they would not otherwise have. In other cases they may be adopting this method to have the simple acquisition procedure of the Acquisition of Land (Authorisation Procedure) Act, 1946, which might otherwise not be available to them.

C. I will try to be as sweetly reasonable as you are! I may get in touch with you again if I have to draft objections to any of the development plans. (*Exit.*)

Central Land Board Practice

Builders' near-ripe land—Sales under method "B" of "House 1"

Attention is drawn to a reply from the Central Land Board which is embodied in the answer to Practical Point No. 319, *post*, p. 431.

Single House Plots

A correspondent has pointed out that the second revision of leaflet House 2, issued in January, 1951, and referred to in the Central Land Board's Press Notice CLB/39 (see [1951] J. P. L. 168), incorporates an important amendment to the previous "House 2" additional to that noted in the Press Notice. Formerly the single plot owner's concession was available, under para. 6 (b) (i) of the form, where the plot was sold "to another person for immediate development". In the revised version of the leaflet the sale must be "to another person who holds a building licence" and the concession apparently will extend only where the sale is direct to the holder of a building licence and not to a builder who purchases with the intention of re-selling to someone else who holds a licence.

Statutory Instruments

The Rules of the Supreme Court (No. 1), 1951

(SI 1951, No. 839 (L.3))

These rules, which came into operation on May 22, 1951, provide *inter alia,* for the addition of a rule 23 to Order 58 of the Rules of the Supreme Court, which relates to appeals to the Court of Appeal, as follows:—

Cases stated by Tribunals

23. Where by or under any enactment any tribunal is or may be empowered or required to state a case on a question of law for determination by the Court of Appeal and no other provision for the statement of a case is made by these Rules the following provisions shall apply:—

(1) Any party to proceedings before the tribunal who is aggrieved by the tribunal's refusal to state a case may within twenty-one days after such refusal apply by motion to the Court of Appeal for an order requiring the tribunal to state a case.

(2) The notice of motion shall state in general terms the grounds of the application, together with the question of law on which it is desired that a case shall be stated and any reasons given by the tribunal for its refusal.

(3) The notice of motion shall be served upon the clerk or registrar of the tribunal and upon every other party to the proceedings before the tribunal at least two clear days before the day named in the notice for hearing the motion.

(4) Where a tribunal is ordered to state a case under this rule, the tribunal shall state and sign the case and shall cause it to be sent by registered post to the party on whose application the order was made within such time as may be directed by the order.

(5) The party at whose instance a case has been stated shall, within twenty-one days after receiving the case, lodge it with the proper officer of the Court of Appeal, together with a notice of motion setting forth that party's contentions on the question of law. The case shall be entered by the proper officer of the Court of Appeal in a list to be kept for that purpose.

(6) The notice of motion shall be served upon the clerk or registrar of the tribunal and, together with a copy of the case, upon every other party to the proceedings

before the tribunal at least twenty-one days before the day named in the notice for hearing the motion. Where the enactment under which the case is stated provides that a Minister or Government department shall have a right to be heard in the proceedings on the case, a copy of the case and of the notice of motion shall be served upon the Minister or Government department concerned.

(7) On the hearing of the case the Court of Appeal may, if it thinks fit, amend the case or order it to be sent back to the tribunal for amendment and shall have power to draw inferences of fact from the facts set forth in the case.

(8) The proper officer of the Court of Appeal shall notify the clerk or registrar of the tribunal of the decision of the Court of Appeal on the case and of any directions given by the Court thereon.

(9) The ordinary practice of the Court of Appeal shall, so far as it is applicable and is not inconsistent with the provisions of this rule, apply to a case stated under this rule by a tribunal.

Town and Country Planning (Control of Advertisements) Amendment Regulations, 1951

(SI 1951, No. 1038)

Made - - -	12*th June*, 1951
Laid before Parliament	13*th June*, 1951
Coming into Operation	1*st July*, 1951

The Minister of Local Government and Planning in exercise of the powers conferred on him by Sections 31 and 111 of the Town and Country Planning Act, 1947, and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

1.—(1) These Regulations may be cited as the Town and Country Planning (Control of Advertisements) Amendment Regulations, 1951, and shall come into force on the first day of July, 1951.

(2) In these Regulations a Regulation referred to by number means the Regulation so numbered in the Town and Country Planning (Control of Advertisements) Regulations, 1948,[1] as amended.[2]

[*continued on p.* 427

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[1] SI 1948, No. 1613; summarised [1948] J. P. L. 332.

[2] SI 1949, No. 1473; [1949] J. P. L. 520.

Parliamentary Intelligence

Replies to Questions in the House of Commons

Development Charges

In reply to Mr. Harrison, the Minister of Local Government and Planning (Mr. Dalton) stated that he did not at present intend further to modify the regulations relating to development charges. (May 8, 1951. H. C. Debates, Vol. 487, col. 1746.)

Situation of Ministry Offices

In reply to Mr. Walker-Smith, the Minister of Works (Mr. G. Brown) said that the movement of staff of the Ministry of Local Government and Planning from the offices in Savile Row was not yet complete, and at present the staff of the Ministry were distributed over eight premises. It was hoped to reduce the number of buildings occupied to three in about three months' time. (May 8, 1951. H. C. Debates, Vol. 487, col. 1754.)

Advertisements

In reply to Sir H. Williams, who asked what steps were being taken to secure continuity of non-offending advertisements after July 31, 1951, and to prevent indiscriminate challenge of advertisements, the Parliamentary Secretary to the Ministry of Local Government and Planning (Mr. Lindgren) said that consultations were in progress with the local authority associations and the advisory committee of the outdoor advertising industry. In reply to another question, he added that there had been very few cases which had been decided by the Minister on grounds of public safety after the local authority had refused permission on the grounds of amenity, or *vice versa*. (May 29, 1951. H. C. Debates, Vol. 488, col. 36.)

Debate on Compulsory Acquisition of Owner-occupied Houses

A debate on the compensation payable upon compulsory acquisition of owner-occupied houses [1] took place in the House of Commons on the motion for the adjournment of the House on May 11, 1951 (H. C. Debates, Vol. 487, col. 2313).

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[1] This matter was previously raised in the House of Commons on February 28, 1951, on a motion for leave to introduce a Bill to amend s. 52 of the Act of 1947. See [1951] J. P. L. 212.

S./L. Cooper said that the exclusion of any payment for vacant possession, under s. 52 of the Town and Country Planning Act, 1947, resulted in great injustice where an owner-occupied house was acquired compulsorily. A public authority could turn a man out of his house and pay him compensation deliberately assessed at a figure insufficient to enable him to purchase another house with vacant possession. In recent months the Minister had confirmed nearly all the compulsory purchase orders submitted to him, and the public inquiries which were held had little effect. A house bought some years ago for £600 might today be worth £2,400, but if a local authority acquired it they would pay compensation of perhaps £1,200, which would be quite inadequate to buy another house.

Even if re-housed by the local authority, the person concerned had to pay rent which otherwise he would not have had to pay, and in cases where the persons evicted were tenants and not owners they lost the protection of the Rent Restrictions Acts.

He considered that the method at present employed by the Minister amounted to legalised stealing, and if there were only a few cases involved, the Minister's responsibilities in protecting them were all the greater.

Mr. Braine said that it was necessary for the government to preserve a proper balance between the interests of the community and the rights of individuals. It was necessary for public authorities to have powers of compulsory acquisition, but the individual should be given replacement value for his property. The same position arose where land was acquired by a development corporation under the New Towns Act, 1946, and a further effect in the area of a New Town was a general depreciation in the value of all properties within the area.

The Parliamentary Secretary to the Ministry of Local Government and Planning (Mr. Lindgren) replied that when public authorities acquired property compulsorily they did so for the benefit of the public. The holding of a public local inquiry was a safeguard, since the authority knew they would have to justify their acquisition. In practically every case the authority had previously made every attempt to acquire alternative accommodation.

He did not admit that any injustice resulted. S. 52 of the Act of 1947 was intended to prevent the public being fleeced for public authorities would otherwise be obliged to pay large amounts for scarcity value. The individual concerned received far more than he had paid for the property, and it was robbery for a house costing £500 in 1935 to be sold in 1950 for £2,000 or £2,500, which the previous speakers thought was quite proper. The Government were right not to pay scarcity values and if that tended to reduce current exorbitant prices it was thereby protecting the public.

The price paid as compensation amounted to about five-sixths of the market value, and the figures in a case cited by S./L. Cooper were obviously incorrect. The policy was one of compensation not of confiscation, and the interests of the general public must be protected against the private vested interests of the landlords and property owners. There had been practically no complaints about the operation of s. 52 and there was no evidence that it was causing undue hardship.

Debate on National Coal Board Regulations

A debate on motions to annul the Town and Country Planning (National Coal Board) Regulations, 1951 [2] (SI 716), and the Claims for Depreciation of Land Values (National Coal Board) Regulations, 1951 [3] (SI 746), took place in the House of Commons on May 31, 1951 (H. C. Debates, Vol. 488, col. 535).

Mr. J. E. Powell said that the Minister should give some reason for making these regulations, the effect of which was to exempt the operational land of the National Coal Board, in essence a commercial undertaking, from development charge and Part VI claims as in the case of statutory undertakers which were essentially non-commercial bodies. It might be, however, that this was logical since the Coal Act, 1938, had nationalised the right to develop coal deposits and the development value was being recouped by the National Coal Board as profits on its ordinary operations.

A further point was that in the case of statutory undertakers, if planning permission to carry out certain development was refused and no adjustments in the undertaking were made as a result of the refusal, compensation was payable to them under Sched. IV of the Act of 1944 as embodied in Sched. XI of the Act of 1947, of the amount of any resulting estimated decrease in net receipts. In the corresponding case under these regulations, not only would the National Coal Board be entitled under Sched. II thereof to compensation for the estimated decrease in net receipts but also for the amount of any expenditure necessary for the purpose of maintaining the estimated output of that particular mine. The Board would be able to claim compensation equivalent to the expenditure which would be necessary to get the same amount of coal from that mine, and this was unreasonably favourable to the Board having regard to their commercial character and nation-wide operations.

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[2] Summarised [1951] J. P. L. 340.

[3] Summarised [1951] J. P. L. 341.

Mr. Powell also inquired why the time for submission of the National Coal Board's claims upon the £300 million in respect of non-operational land had been extended to October 31, 1951, since if the Government had defined operational land in relation to the Board's land, the normal period for submitting such claims, which expired on June 30, 1949, could have applied.

Mr. D. Walker-Smith stated that the three main benefits of statutory undertakers under the Act of 1947 were that they were free from the jurisdiction of local planning authorities in respect of certain developments, they obtained compensation for refusal of permission to develop operational land, and they were exempt from development charge in respect of land which was operational land on July 1, 1948.

With regard to the compensation provisions, he asked whether the intention was to put the National Coal Board in a more favourable position than that of statutory undertakers, or to accord them equal treatment, albeit in somewhat different circumstances.

With regard to planning control, the National Coal Board would be in the same position as statutory undertakers in relation to the designation of land in a development plan as being subject to compulsory purchase, and he hoped that the Minister would not allow the powerful influence of the Board to over-ride proper planning considerations.

Col. Clarke inquired as to exactly what land in the possession of the National Coal Board would be treated as land of statutory undertakers.

The Parliamentary Secretary to the Ministry of Local Government and Planning (Mr. Lindgren) reminded Col. Clarke that an Explanatory Memorandum[4] dealing with the regulations had been issued. He said that the regulations were necessary because the Act related primarily to land operations generally, and the provisions including those as to statutory undertakers, required modification in their application to minerals and coal mining. The National Coal Board had inherited much land that had no direct relationship with coal production, but that was non-operational land, and outside the scope of the regulations.

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[4] See note at p. 374, *ante.*

Coal had been nationalised by the Coal Act, 1938, and if there were no exemption from development charge and from claims on the £300 million fund in respect of the working of coal the Board would be claiming for loss of development value of coal workings for which the State had already paid £66 million to the former mineral owners, and the Treasury would not be recouped by development charges for a long time.

The regulations had to allow for the fact that the Coal Board was in a position different from that of a normal statutory undertaker. There would be cases where seams of coal were left, for instance in order to support a railway, and a diversion in the workings resulted. That might result in certain expenditure being necessary, as for a new set of headings, even if no loss of production resulted, and it was right that compensation should be payable in respect of such expenditure. Coal which was so left would ultimately be a loss to the Board, but whereas in former times the colliery companies had got the full value of such coal immediately, the Coal Board would only get that value after many years.

It had not been possible to provide for claims on the £300 million to be made by the Coal Board until operational land was defined, and it had not been possible to define it until after extensive negotiations had been completed.

Motions, by leave, withdrawn.

Notes of Cases

Higham v. Havant and Waterloo U. D. C. (June 5, 1951). The Court of Appeal (Cohen, Singleton, and Morris, L.JJ.) have dismissed an appeal against the decision of the Divisional Court of the King's Bench Division, noted *ante*, [1951] J. P. L. 58, and reported at 1 P. & C. R. 281. The Court adopted the conclusion and reasons of the Divisional Court, and did not consider it desirable to state any further reasons.

Lands Tribunal Decisions*

Smith v. Bedford R. D. C. (Ref. No. 4/1951, May 9, 1951). This was a claim for compensation upon the compulsory acquisition of 2.36 acres of arable land at Oakley, Bedfordshire. The claimant claimed £750. The acquiring authority valued the land at £250.

The Tribunal (J. P. C. Done, Esq., F.R.I.C.S.), who inspected the land and heard evidence as to its merits, accepted that it was "very early land" which compared favourably with the best market garden land in that part of the Ouse Valley. Having regard to the prices realised on sales of other comparable land, the Tribunal assessed the value at £150 per acre, plus an additional £100 in respect of immediate possession. The compensation was accordingly £450.

Hudson v. Brighton Corporation (Ref. No. 103/1950, May 18, 1951). This was a claim for compensation upon the compulsory acquisition of a detached house at Brighton, comprising four top-floor bedrooms, five first-floor bedrooms, three reception rooms, bathroom and w.c.s, and two garages.

The claimant's valuer stated in evidence that the property could readily be sold for £6,500, and he assessed the statutory capital value for the purposes of s. 52 of the Act of 1947 at £5,500, based on a rental value of £275 per annum, capitalised at 20 years' purchase. The District Valuer, on behalf of the acquiring authority, valued the premises at £4,300, based on a rental value of £225 per annum during the four years of the notional lease under s. 52, and £265 per annum in perpetuity thereafter.

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* Reports of these cases will be published in *Planning and Compensation Reports*.

The Tribunal (J. P. C. DONE, ESQ., F.R.I.C.S.) considered that it was not sound to value the premises on a rental basis as though they would have no appeal except that of a mere investment, since the persons in the market to buy the freehold might include investors and persons hoping for possession at the end of the lease, and also the lessee himself. Nor should the details of the valuation ignore the incidence of income taxation. The open market price which the property, subject to the notional lease, might reasonably have been expected to yield if submitted for sale at the date of notice to treat depended, in the opinion of the Tribunal, more upon practical than arithmetical considerations. This price, which was the compensation payable, was assessed at £5,300.

Taylor and Taylor v. Sutton and Cheam Borough Council (Ref. No. 35/1950, May 11, 1951). This was a claim for compensation payable upon the compulsory acquisition of certain land, 11.59 acres in all, at Sutton and Cheam, Surrey. Notice to treat was served on October 29, 1946, and the compensation accordingly fell to be assessed under s. 57 of the Town and Country Planning Act, 1944, in respect of the land in its state at the date of notice to treat, but at prices current in March, 1939.

The claimants claimed £73,348 for the value of the land together with injurious affection of other lands, and a detailed valuation amounting to £80,829, was submitted on their behalf. The District Valuer assessed the value of the land taken at £14,500, and injurious affection to other land at £4,750, totalling £19,250.

The Tribunal (Sir WM. FITZGERALD, K.C., J. P. C. DONE, ESQ., F.R.I.C.S., and JAMES L. MILNE, ESQ., F.R.I.C.S., F.A.I.) dealt *seriatim* with the items of claim in the assessment of the claimants' valuer.

In respect of the freehold interest in the land acquired the Tribunal rejected the claimants' figure of £17,850, based on £7 per foot of frontage, and accepted £16,065, based on £7 per foot but allowing for 5 per cent. interest during a deferment period of two years, although without deduction of developer's profit, deducted at 10 per cent. by the District Valuer in his calculation.

A submission for the acquiring authority that no compensation should be payable to the claimants in respect of injurious affection since the claimants had only an equitable right to a conveyance of the land acquired whereas the remaining land had been conveyed to them as trustees, was rejected by the Tribunal having regard to *Cowper Essex* v. *Acton Local Board* (1889), 14 App. Cas. 153, as applied by *Oppenheimer* v. *Minister of Transport*, [1942] 1 K. B. 242, and the Tribunal declined to give their decision in the form of a Special Case.

The Tribunal considered that the erection of pre-fabricated bungalows on the land acquired had resulted in serious injurious affection to land retained fronting on the same road. Compensation for this was assessed at £6,442, the difference between £12,883, taken as the value before injury and being based on £7 per foot frontage reduced by deferment for 2 years, and half that value, taken as the value after the acquisition. In respect of certain other plots of land, injurious affection was assessed at £200, £700, £451, £1,600, and £3,000, the latter figure being calculated without regard to a notice which had been served before the date of notice to treat giving notice of the local authority's decision to make an order under s. 4 (1) of the Town and Country Planning (Interim Development) Act, 1943. Depreciation in the claimants' interest in a golf club which formed part of the estate, in respect of which there had been a lease to a golf club company for 45 years from December, 1948, was assessed having regard to the effect of the acquisition upon the finances of the company, and hence upon the claimants, at £2,500. Injurious affection to two houses had to be assessed without regard to the Rent Acts by virtue of s. 57 (2) and para. 3 of Sched. VII of the Act of 1944 since the Acts did not apply to them on March 31, 1939; and the depreciation in value was assessed at £850 each house.

The Tribunal accordingly awarded compensation of the total of all the sums so assessed, amounting to £32,658.

Lester and Jones v. Secretary of State for War (Refs. Nos. 95/1950, 111/1950, May 22, 1951). This was a claim for the assessment of compensation payable to the owner and mortgagee of property at Willenhall, Staffordshire, upon the compulsory acquisition thereof. The property comprised 2,075 sq. yds. of land and included a small factory consisting of a single-storey building 131 ft. long and 8 ft. to 10 ft. wide, a two-storey workshop 26 ft. by 16 ft., a single-storey office and warehouse 30 ft. by 13 ft., and a range of w.c.s, and also an area of land used as a yard and for access of vehicles. The latter land had been requisitioned from 1940 to January, 1947, by the county council, who had erected on it 20 garages, an office, and an air raid shelter. Since de-requisition the garages had been let to tenants.

Notice to treat had been served on the owner on March 4, 1949, and on the mortgagee on June 29, 1950. The owner had originally claimed £6,650, but now submitted a valuation amounting to £5,268. The District Valuer's valuation was £1,575.

The Tribunal (JAMES L. MILNE, ESQ., F.R.I.C.S., F.A.I.), reviewed the position of the property in relation to town planning permission and the uses to which the property had been put, and certain offers which had been made for it. There had been an offer to take a lease of the garages at £200 p.a., made by the county Territorial Army Association before the date of notice to treat, and having regard to the decision in *Pointe Gourde Quarrying and Transport Co., Ltd.* v. *Sub-Intendent of Crown Lands*, [1947] A. C. 565, the special suitability of the premises for the Association's purposes was not excluded by rule (3) of s. 2 of the Acquisition of Land, etc., Act, 1919.

Whilst under s. 51 of the Act of 1947 it was necessary to assume that planning permission would not be granted for other uses of the property, the Tribunal was not satisfied that persons in the local market would at the date of notice to treat have been sufficiently acquainted with the details of planning legislation to be deterred from purchasing the property.

The factory premises had been let from July, 1945, to July, 1948, for an industrial use, but the Tribunal considered that certain offers to purchase made by industrial firms did not affect the valuation now to be made, as planning permission for their uses would not have been granted except on a short-term and conditional basis. The factory had been used since January 7, 1937, for manufacturing locks, and under s. 12 (5) of the Act of 1947, this was the permitted use under the Act. It was a use which was one of the main trades of the district, and the needs of two manufacturers owning adjoining premises were not to be excluded having regard to the *Pointe Gourde* case, *supra*.

In all the above circumstances, and assuming a life of ten years for the garages, the Tribunal assessed the compensation at £3,200, to cover the interests of both purchaser and mortgagee.

Fredman v. Plymouth Corporation (Ref. No. 91/1950, May 24, 1951). This was a claim for compensation upon the compulsory acquisition of war-damaged premises at Plymouth. The premises were within an area covered by a declaratory order under s. 1 of the Town and Country Planning Act, 1944, and the compulsory purchase order provided for expedited completion and so applied the provisions of Sched. VI of the Act of 1944.

Notice to treat was deemed to be served on August 27, 1947, the date of registration of the order in the local land charges register, and compensation accordingly fell to be assessed under s. 55 of the Act of 1947. Since a cost of works payment would have been appropriate in respect of the war damage, s. 53 of the Act of 1947 applied and the premises fell to be valued on the assumption that they had been fully reinstated before the date of notice to treat. The notional lease provisions of s. 52 of the Act of 1947 were also applicable. The premises, situated in an important business street in Plymouth, had been a single-fronted furniture shop with showroom on the first floor, two store rooms on the second floor, and two attic rooms in the roof.

The claimant's valuer submitted a detailed valuation amounting to £15,500; the District Valuer, one totalling £11,452, both based on estimated rental values.

The Tribunal (SIR WM. FITZGERALD, K.C., J. P. C. DONE, ESQ., F.R.I.C.S., and JAMES L. MILNE, ESQ., F.R.I.C.S., F.A.I.) after comparing the estimated rental values adopted by the two valuers accepted the claimant's figure of £775 as the net rental value whether under a lease for twenty-one years or a lease expiring on January 1, 1954. The Tribunal were further of the opinion that a well-advertised sale of the reinstated property would have aroused great interest and competition, and they accordingly capitalised at twenty years' purchase, the basis adopted by the claimant's valuer, resulting in the capital value of £15,500, which was the amount of compensation to be paid.

The claimant was awarded his costs of the reference to the Tribunal.

Klingelhoefer and Klingelhoefer v. Ilford Borough Council (Ref. Nos. 6097, 6098. April 12 and June 8, 1951). These were references for the assessment of the compensation payable upon the compulsory purchase of 0.547 acres of land at Ilford, Essex, used as a market garden. Notices to treat were dated February 10, 1947, and compensation accordingly fell to be assessed at 1939 prices under s. 57 of the Act of 1944.

The claimants had estimated the freehold value of the land at £19,250, and also claimed for disturbance to the occupier, the second claimant, valued at £1,284 10s. 6d. The district valuer submitted a valuation of £1,150 for the freehold interest and £177 13s. for disturbance.

The Tribunal (J. P. C. DONE, ESQ., F.R.I.C.S.) held that the second claimant was the occupier of the land under a mere family arrangement and not under a legal tenancy, and that it should be assumed that the freeholder's and occupier's interests were identical; and, on the evidence as to the neglected state of the land, that the occupier's business had no market value at all.

The freehold interest had to be valued having regard to the zoning provisions under the planning scheme in operation at the date of notice to treat, which would not have allowed for development of the land by the erection of shops, apparently the basis of the claimants' valuation. The Tribunal, agreeing with the basic figure of £7 per foot frontage adopted by the district valuer, assessed the freehold value at £1,300.

The Tribunal considered the claimants' valuation of disturbance to the occupier at £1,250 was entirely unrealistic, and accepted the district valuer's figure of £177 13s. as the value of the stock which would have had to be abandoned. An additional £15 was allowed for fencing and gates, for which £50 had been claimed, and the total compensation awarded accordingly amounted to £1,500.

Having regard to the conduct of the claimants, who had not attended the hearing even after it had been adjourned to afford them a further opportunity to do so, the claimants were ordered to pay the acquiring authority's costs of the hearing.

*Notes of Planning Decisions**

Erection of House in Green Belt

The Minister of Local Government and Planning has allowed an appeal against the refusal of Kent County Council to permit a house to be built on land at Fawkham Valley Road, Fawkham.

The Minister agrees with the Council's general policy to confine building, as far as possible, to suitable areas, and he has taken into account the fact that the appeal site lies within the metropolitan green belt as proposed in the Greater London Plan of 1944.

He feels, however, that this proposal merits special consideration since the west side of Fawkham Valley Road is already fairly well developed. He does not consider the introduction of one house in a plot of about 8¾ acres can be termed an addition to undesirable ribbon development; nor does he think that it will be an unwarrantable intrusion into the green belt, situated as it is on the extreme fringe among other development.

He therefore allows the appeal, subject to the siting, design and appearance of the building being approved by the Council or by himself on appeal.

[By courtesy of the Public Relations Officer, Kent County Council.]

"Briar Patch": Substandard Bungalow Erected without Planning Permission

The following is an extract from the letter of the Minister of Local Government and Planning dated May 4, 1951, granting a limited permission following an appeal against the decision of Easthampstead Rural District Council refusing permission for the bungalow called Briar Patch, Ralph's Ride, Bracknell.

"The Minister agrees with the Council's view that the development of this area is already in various respects unsatisfactory, and would be much more unsatisfactory if further development took place, particularly on sites as small as that of Briar Patch. It would be impossible to provide for the drainage of a considerable number of houses on the sites themselves, and the provision of adequate main sewerage for an area of such unsatisfactory development would involve quite unjustifiable expense. In these circumstances it would be wrong to allow further development on sites as small as that of Briar Patch, and would also be wrong that Mr. Kirby, having put up his bungalow in the first place without applying for planning permission, should be granted a permanent or long period permission that would be refused to other persons applying for permission in the proper way. The Minister has no doubt that Briar Patch is a bad piece of development which must in due course be cleared away. He appreciates, however, that Mr. Kirby might find difficulty at present in finding a home which to him is as satisfactory; and, in the circumstances, he considers that the proper course is to grant permission for the retention of the bungalow for three years, which will give Mr. Kirby reasonable opportunity to find another house or a satisfactory site upon which to build a proper house for himself if he prefers."

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* The Managing Editor desires to express his thanks to those who have been kind enough to send to this Journal particulars of planning decisions, and hopes that he will continue to receive particulars of planning decisions which involve points of general interest.

[By the courtesy of the Clerk of the Berkshire County Council.]

Erection of Shop and Dwelling-house on Main Road

The following is an extract from the letter of the Minister of Local Government and Planning dated May 30, 1951, allowing an appeal against the refusal of the Bagshot Rural District Council to permit the erection of a shop and dwelling-house on a plot of land at Lightwater, Surrey.

" The Minister has given careful consideration to the facts of the case and the representations made. He notes that the catchment area for shoppers lies mainly on the south side of the Guildford Road and that the appellant is prepared to set back the building to provide for the parking of the delivery vehicles off the highway. While he agrees with your Council that further development, which would encourage the parking of vehicles on this busy road and thereby impede the flow of traffic and cause danger to road users, should be prevented, he has come to the conclusion that, with provision made for the parking of delivery vehicles off the highway, there would be less danger from this proposal than from requiring shoppers to cross this busy road.

The Minister has accordingly decided to allow the appeal and permit the erection of a shop and dwelling-house on the site, subject to the siting, detailed plans, and elevations being to the satisfaction of the local planning authority, or, in default of agreement, as determined by the Minister."

[By courtesy of Messrs. Sadler & Baker, Chartered Auctioneers.]

Caravan Camping Site in Rural Zone

The following is an extract from the letter of the Minister of Town and Country Planning conditionally allowing an appeal against the Axbridge Rural District Council's refusal to permit the use of land at Berrow, Somerset, as a caravan site. The grounds of refusal were that the land is outside the area to be zoned for caravan camping in the development plan, that sufficient provision of camping sites already exists, that the site under appeal is not satisfactory because it is at the back of residential property and that the access is inadequate.

" The Minister sees no reason to dissent from the general line of the policy which the Council are following in regard to camping. It is probable, however, that some campers prefer a situation less exposed than can be found in the coastal strip. In the present case, the site is on the farthest northern outskirts of Berrow and in fact on land which the Council propose to include in a rural zone. It is beyond the last row of houses, the nearest of which, apart from the appellants' own bungalow, is 70 yards away. The nearer houses are all bungalows and, since the site is screened from this direction by a high hedge, the caravans will not be seen except from Bussome Lane, 250 yards to the east. In these respects, the site compares favourably with the camp at Marsh Farm, which is in full view of houses immediately opposite it in Parsonage Lane. It is noted that no residents have raised objection to the appellants' proposal, while several of the nearer residents gave evidence in support. It is noted also that in granting a licence under the Public Health Act, the Council have satisfied themselves that adequate sanitary arrangements will be made. There remains the question of access : vehicular access is by way of a paved track, 9 feet wide, which serves also the Parish Hall and the appellants' bungalow. This would appear to be adequate for the small amount of traffic likely from the use of this 1 acre site.

The Minister has decided accordingly to grant permission for the use of the land in question as a site for not more than twelve caravans."

[By courtesy of the Clerk of the Somersetshire County Council.]

Advertisement Boards—Danger to Traffic

The Minister of Local Government and Planning has dismissed an appeal against the refusal of Beckenham Borough Council to allow the display of two advertisement boards at either end of a war-damaged site at Beckenham Road, Beckenham.

The Minister thinks the proposed display would not be prejudicial to amenity, but as the boards would face a main road which is crossed by a railway bridge on one side of the site and crosses another railway line on the other, and as there have been numerous road accidents in the vicinity, he has consulted the Minister of Transport. He has consequently come to the conclusion that it would be imprudent to increase the hazards already present by allowing the addition of advertisement panels which could hardly fail to attract the attention of road users.

[By courtesy of the Public Relations Officer, Kent County Council.]

Repair of Motor Vehicles, and Retail Sales, in Residential Area

The following is an extract from the letter of the Minister of Local Government and Planning, dated May 30, 1951, allowing an appeal against the refusal of the Tottenham Borough Council to permit the continued use of premises at Hanbury Road, Tottenham, for the repair and maintenance of motor vehicles and the retail sale of motor accessories for a period of seven years.

"The Minister agrees with your Council's general policy of preventing the encroachment of industry into residential areas. He notes, however, that the appellant is willing to meet the main objection raised by nearby residents, by restricting his working hours. He also observes that no unduly heavy or noisy machinery is used by the appellant, and in general he is satisfied that the business on its present scale causes little harm to amenity and at the same time is of value to the area as a service industry.

The Minister has accordingly decided to allow the appeal and he hereby grants permission for the continued use of the ground floor and basement of the premises in question for the repair and maintenance of motor vehicles, subject to the condition that they shall not be so used on Sundays or between the hours of 6 p.m. and 8 a.m. on weekdays, and for retail sales."

[By courtesy of Messrs. Edwin Brown & Garlands, Chartered Surveyors.]

Book Reviews

The Pocket Law Lexicon. Eighth Edition, edited by A. W. Motion, M.A., LL.B., Barrister-at-Law. (Stevens, 1951. viii + 419 pp. 17s. 6d.)

For any layman who has to deal with the effusions of the legal profession, and is not ashamed to admit that he does not know the meaning of many of the words used, this book should be an excellent investment. The present edition has its faults, no doubt: the bringing up-to-date of references to statutes and statutory instruments was slipshod; so were the typography and proof-reading, especially (unfortunately) where Latin and law-French phrases were concerned; and the attempt to introduce pronunciations of the more troublesome words and phrases has not proved a success. Prospective purchasers, however, should not let these things deter them from buying: the bulk of the book is still sound.

T. A. B. W.

The Rent Acts. By R. E. Megarry. Sixth edition. (Stevens. 1951. lxxvi and 611 and (index) 23 pp. 50s.)

The sixth edition of this work can only be described as excellent. The author has indeed managed to achieve an improvement on the earlier editions. This improvement consists chiefly in a better arrangement of chapter, section and paragraph titles and sub-titles. The order of treatment of the subject in the text, apart from a new chapter on the Act of 1946, is little altered, but the classification of the principal and subsidiary divisions of the text is now more logical and is presented with greater clarity. The book is now divided into four parts, the first of which concerns the Acts in force and jurisdiction. Under the latter head, the section on appeals has been expanded to include observations on Judges' notes of evidence and of judgments. Part II deals with the application of the Acts. The only comment here is that the chapter on financial and historical requirements ought logically to precede those on "let as a separate dwelling" and tenancies excepted from the Acts. Parts III and IV concern benefits conferred on tenants by the Acts, and mortgages respectively. The author has provided a much expanded table of contents arranged so as to accord with the improved classification of the text. In the result, reference to the law on any particular aspect of the subject is very much facilitated. A further very useful addition is a note following the table of cases on the *Estates Gazette* reports.

More than 350 cases have been added and the book contains 389 pages of text, an increase of 133. Nevertheless, the author presents this truly remarkable wealth of detail with the lucidity which his readers expect of him. Indeed, the only valid criticism which can be made of the new edition is in respect of its bulk. If the expansion of the book continues without restraint the work may soon reach its optimum usefulness. One of its many advantages has always been that it is readily transportable, and, thus, a protection from surprise. There are two ways in which the size of future editions can be kept within reasonable limits. The first of these is to limit references to county court, sheriff court and other minor decisions to points on which no other adequate authority exists. In any event such decisions ought not, with few exceptions, to be cited as authorities for definitive propositions. Many practitioners would prefer an expression of Mr. Megarry's own opinion which frequently attracts judicial approval. The second suggestion is that the author eschew his practice of stating a proposition by a quotation or a series of quotations from judgments. See, for example, those on pages 14 and 150–151, where more laconic language could have reduced the paragraphs to half their present size. A minor point is that the author's expressions of humour, which admittedly have enlivened past editions are perhaps an unnecessary luxury having regard to the size of the present edition.

V. G. W.

Statutory Instruments

(*continued from p.* 411)

(3) The Interpretation Act, 1889, shall apply for the interpretation of these Regulations as it applies for the interpretation of an Act of Parliament.

2. In sub-paragraph (*b*) of paragraph (2) of Regulation 11 after the word "any" there shall be inserted the words "building normally used for religious worship,".

3.—(1) The following Class shall be added to paragraph (1) of Regulation 12:—

"CLASS V—*Flag advertisements*

Any advertisement in the form of a flag which is attached to a single flagstaff fixed in an upright position on the roof of a building, and which bears no inscription or emblem other than the name or device of a person or persons occupying the building."

(2) In sub-paragraph (*b*) of paragraph (2) of Regulation 12 after the words "an advertisement of Class I" there shall be inserted the words "or Class V".

4. In sub-paragraph (*c*) of paragraph (3) of Regulation 10 and in sub-paragraph (*d*) of paragraph (1) of Regulation 16 the word "other" shall be deleted and after the words "may direct" there shall be added the words "under Regulation 28 of these Regulations".

EXPLANATORY NOTE

(*This Note is not part of the Regulations, but is intended to indicate their general purport.*)

These Regulations amend the Town and Country Planning (Control of Advertisements) Regulations, 1948. Regulation 2 includes direction signs to places of worship among the advertisements for which consent may be granted on application in an area defined by order as an area of special control. Regulation 3 adds a limited class of flag advertisements to the classes of advertisements which may be displayed without prior application for consent. Regulation 4 makes minor alterations in the provisions of the 1948 Regulations in regard to consultations which local planning authorities are required to undertake.

Practical Points

All questions for consideration should be addressed to "The Managing Editor, The Journal of Planning Law, 3 Chancery Lane, London, W.C.2." The questions of subscribers only are answerable in the Journal. All questions should be submitted in duplicate. The Publishers cannot accept any responsibility for the correctness of replies.

315. *Compulsory purchase—acquisition by local authority for purpose of keeping property in repair.*

It appears that some local authorities who have compulsorily acquired properties do not use these for re-housing tenants but take the revenue from such properties solely for the purpose of keeping them in a state of repair, thus depriving owners of the income from these properties and agents of their usual fees for management.

Could you please state whether local authorities are entitled to acquire properties compulsorily without re-housing tenants immediately? [A. M. W.]

ANSWER

Certainly local authorities are under no obligation immediately to eject tenants of property acquired compulsorily, if it is reasonable in the circumstances that they should be allowed to remain in occupation. But the authority's action can only be questioned by the following methods:

(a) Before the compulsory purchase order is made, by impugning the necessity for the purchase at the local inquiry.

(b) After the order is made, by an appeal (within six weeks) to the High Court, on the ground that the authority have exercised their powers for improper motives—but this will be very difficult to prove.

(c) At any time, by action for a declaration, or possibly through the District Auditor in the event of an illegal expenditure of money, to the effect that the local authority have no power to hold the property for "investment" purposes (if such be the case). This again will be very difficult to substantiate. [J. F. G.]

316. *Development—addition of sunblinds to shop-front.*

Can you please give me your views on the following points :—

1. Is planning permission necessary before sunblinds are added to a shop front, *i.e.*, are they " building operations " and, if so, works which " materially affect the external appearance of the building " ?

2. Does the fact that the blinds are grey and inconspicuous affect your opinion; and further would the replacement of the grey ones by bright coloured ones be " material " ?

3. If development takes place, when in fact does it occur—when the blinds are erected (assuming they are ones that close flat up against the shop front) or when the shopkeeper opens them out? [K. H.]

ANSWER

Application might be usefully made for a determination under s. 17 of the Act.

1. This may be a building operation if the erection of a sun blind involves the insertion of girders otherwise it is probably an " other operation in on or over land ". Whether it " materially affects the external appearance of a building " is a question of fact. In its closed state it does not and in that state it exists for the major part of the day; but against this is the fact that in its real use it is opened out and may govern the whole appearance of the shop. The painting of a building has had to be specifically excluded from development by the General Development Order, 1950, Class II, 2. No such provision exists with regard to sunblinds and I see no reason why their erection should not be classed as development.

2. Although the colour is changed the use remains the same.

3. Presumably on the first occasion when the blinds are opened out.

As a general observation the control would ordinarily only be nominal and only unusual considerations would involve a refusal of permission. A development charge would not, I understand, be levied. [R. P. C.]

317. *Development charge—addition of land to curtilage.*

I have in hand a case in which a builder has erected two pairs of semi-detached houses on 990 square yards of land in respect of which a s. 80 certificate was obtained.

The vendor of the land made it a condition of sale to the builder that he should take, and pay for, a further 312 square yards of back land, triangular in plan, between the house layout and an existing field wall and the builder has been informed by the planning authority that he must apply for planning permission to add this land to the curtilage of the houses.

This has been done, and, as called for by the Central Land Board, an application made for assessment of development charge. The District Valuer assessed the charge at £25 and, on protest being made against the amount, offered as a concession to reduce it to £20.

This is where the matter rests at present and I am writing to inquire if you know of any instances where paras. 64 and 65 of the Practice Notes have been held to justify nil development charges in cases such as the one I have described. [S. & W.]

Answer

Presumably the additional land has been added partly to each of the four houses. The development charge should, according to the Board's own "before and after" method, be separately assessed for the addition to each curtilage. If the District Valuer says that each house without the additional land is £1,750 (or whatever it may be) and with the additional land £1,755, he is a more exact valuer than most.

The land might all be sold to the four purchasers of the houses as tenants in common for use as allotments, when it would not be within the curtilage of any house although the four owners could share out the area as they pleased. [W. A. L.]

318. *Enforcement notices—caravans.*

The owner of agricultural land gave permission to Mr. X to place caravans on the land. No planning approval has been given to the use of the land as a site for this purpose. The local planning authority have served an enforcement notice on the owner of the land.

(1) Should an enforcement notice be served on Mr. X, *i.e.*, can he be regarded as occupier for the purposes of s. 23 (1) of the Act?

(2) Could the local planning authority bring proceedings under s. 24 (3) of the Act against Mr. X even though the enforcement notice has been served upon the owner of the land only? It is observed that proceedings may be brought

under s. 24 (8) "against any person" using land in contravention of an enforcement notice. [A. B.]

ANSWER

(1) The fact that there is a mere licence (not a tenancy) does not preclude occupation (see *Cory* v. *Bristow* (1877), 2 App. Cas. 263 and *Kittow* v. *Liskeard* (1874), L. R. 10 Q. B. 7). Both owner and licensee may be occupiers (see *Back* v. *Daniels*, [1925] 1 K. B. 526, at pp. 542–543). But caravans unlike fixed dwellings do not attach to the land; their exact position on the land may not be specified and their stay limited. Occupation is a question of fact. If the control of the land is sufficient to exclude the owner and all other persons then Mr. X is an occupier; otherwise not. In the circumstances, it might be the safer and more practical course to accept Mr. X as an occupier and serve a notice on him under s. 23 of the Act.

(2) Yes. Any person includes Mr. X. The enforcement notice will be registered as a local land charge. [R. P. C.]

319. *Near ripe land—sales under method "B" of House* 1.

With reference to Practical Point No. 308 ([1951] J. P. L. 312), the Central Land Board have in the course of recent negotiations with this firm, agreed to assess a development charge as soon as planning consent has been granted, even though there is no prospect of the development being carried out either immediately or within twelve months. The development charge is assessed on current values without any deferment, and is secured by the vendor giving to the Board a charge on his compensation under s. 58 of the 1947 Act.

Sales under method "B" are only applicable to land which is either near ripe or is accepted by the Board within paragraphs 139 and 140 of the Practice Notes, in all of which cases the whole or part of the compensation for loss of development value is guaranteed.

There is, therefore, no need for vendors to make any reserve for payment of future charges, for amounts assessed on any sales under method "B" will be deducted when the compensation is payable in 1953. [S. & B.]

ANSWER

The Central Land Board state that land can be sold under method "B" whether or not it attracts a guaranteed payment from the £300 million fund.

It is true that the Board are prepared to facilitate sales under method "B" by arranging for development charge to be assessed in certain cases where, although planning permission has been obtained, the issue of a building licence may be held up. The Board will extend this special consideration only to requests for determinations of development charge in respect of the development of one plot or a few plots with a view to sale under method " B " and where they are satisfied that, but for the non-availability of a building licence, the land in question is reasonably ripe for development. Applicants are asked to show that they intend to sell the land at a fair price inclusive of development charge, and are in fact able to do so. This means that negotiations with a specific prospective purchaser must have proceeded beyond the stage of preliminary inquiries, and that at least a provisional understanding must have been reached on the terms of the proposed sale. The Board then consider whether the proposal involves development of a sort which would be likely to take place on the land in question within a reasonably short period if a building licence were available. If they are satisfied on these points they will usually be prepared to proceed with the assessment of any development charge which may be payable.

The District Valuer will assess the charge on the basis that the land is fully ripe and will not assume any deferment. When the full amount of the charge has been paid or secured to the Board's satisfaction, a formal certificate of determination and payment is issued and no question of review at a later date will arise.

This procedure cannot be operated in cases where it is requested that the charge be logged up under the arrangements described in para. 3 of the Board's leaflet S.1A/NR (Revised), on builders' near ripe land, until the development value of the near ripe ration has been assessed and the Board are satisfied that a charge on the credit so provided gives ample security for the development charge. [J. B.]

THE JOURNAL of PLANNING LAW

Published by
SWEET & MAXWELL, LIMITED
2 & 3 CHANCERY LANE, W.C.2

On the First of Every Month

Subscription: £1 10s. 0d.

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"*Planning Law*" *Notes*

We have to announce with the most profound regret that Dr. Harold Potter died on July 3, last, following an operation.

Dr. Potter was a member of the Editorial Board of this Journal and did great service to the legal profession by being the first to see clearly that the planning legislation of 1947 raised problems in conveyancing of an important practical nature. No suspicion of this had crossed the minds of the framers of the Act, which was innocent of any specific provisions dealing with the matter. Applying his great knowledge of real property law to the new Act, Dr. Harold Potter drew the attention of the profession to the possible pitfalls. Conservative opinion has been reluctant to believe that important changes in the law of real property could be a species of by-blow of planning, but the difference between the airy treatment of planning in the 14th edition of the "National" Conditions of Sale and the elaborate provisions of the 15th edition is a measure of the distance which conveyancers travelled, goaded by Dr. Potter's pen.

To the Managing Editor his death has been a personal bereavement. He was a very kind and always helpful colleague.

The Ministry of Local Government and Planning has issued a leaflet on the "New Towns—What to see: How to get there", providing a concise statement of the whereabouts of the New Towns, the best ways of reaching them, and the arrangements made for visitors.

A circular of the Ministry of Local Government and Planning (No. 47/51, dated July 5, 1951), draws the attention of local authorities to the extension for a further twelve months, to June 30, 1952, of the existing financial limits (normally £100) within which building work may be done without a licence. The Order effecting this extension is the Control of Building Operations (No. 16) Order, 1951 (SI 1951, No. 1082).

The circular also draws attention to a recent High Court case (*Bob Keats, Ltd.* v. *Farrant*, [1951] W. N. 222), where an appeal against conviction for contravention of Defence Regulation 56A was allowed because although the local authority had passed a resolution that the appellant should be prosecuted they had omitted to pass any resolution authorising their clerk to take proceedings. As the Order required the appointment of an officer for the purpose of taking proceedings, a formal appointment under s. 277 of the Local Government Act, 1933, by resolution, was necessary.

The Minister of Local Government and Planning has now officially approved the route for the Pennine Way, the first long-distance route to be approved under the National Parks, etc., Act, 1949. The route, which is intended for walkers and riders on horseback, will be 250 miles long, and it will be necessary for an additional 70 miles of rights of way to be created.

The following opinions of the Council of the Law Society are reprinted by kind permission of the Editor of the *Law Society's Digest* :—

1391 (f) Town and Country Planning Act, 1947; certificate under section 80; whether document of title.

A plot of land in respect of which a certificate under Section 80 ("dead ripe" certificate) of the Town and Country Planning Act, 1947, had been issued, was the subject of a sale, the plot being one of many to which the certificate related, and accordingly it was necessary for the vendor to retain it.

The purchaser's solicitors required the vendor to give the usual form of acknowledgment for production and undertaking for safe custody of the certificate, but the vendor's solicitors contended that it was not a document of title and that a duplicate could where necessary be obtained from the Central Land Board.

The Council expressed the opinion that the certificate under section 80 was not a document of title, and accordingly the purchaser was not entitled to require from the vendor an acknowledgment and undertaking in respect thereof, nor to require such a certificate to be abstracted. *Opinion of Council, May* 5, 1950. [*See also* [1950] J. P. L. 561–2.]

1464 (k) Town and Country Planning Act, 1947; statement of user in contract; right to similar provision in conveyance.

A contract for the sale of certain freehold property subject to the *National Conditions of Sale* (15th ed.) contained the following special condition:—

> "The property is sold on the footing that the permitted use thereof for the purposes of the Town and Country Planning Act, 1947, is use as a single private dwelling house."

The purchaser's solicitors inserted a recital in the draft conveyance that the property was on July 1, 1948, used as a single private dwelling house and curtilage and for such other purposes as such user as aforesaid would authorise under or by virtue of the Town and Country Planning Act, 1947. They also inserted a declaration that the property was held at the date of the Conveyance as such dwelling house and curtilage together with the right to use the same for such other purposes as might then or thereafter be authorised in connection with such user under or by virtue of the Town and Country Planning Act, 1947, or any amending or replacing Act.

The vendor's solicitors objected to the inclusion of such a recital and declaration in the conveyance, and contended that the above-quoted special condition in the contract was inserted merely for the purposes of Condition 14 (2) of the *National Conditions of Sale.*

The Council expressed the opinion that user was not a matter of title, and accordingly the purchaser could not insist upon having the recital and declaration in question in the conveyance, unless specific provision therefor had been made in the contract. (See *Emmet on Title* (19th ed.), vol. 1, pp. 43–44, and "Precedents in Conveyancing under the Planning Acts" (1950), by Harold Potter, at p. 13.)—*Opinion of Council, February* 3, 1950.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Journal. They should be sent to the MANAGING EDITOR, *Journal of Planning Law,* 3 CHANCERY LANE, LONDON, W.C.2. *Every attempt will be made to return drafts or unsuitable copy but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

Some Implications of the Town and Country Planning (Grants) Regulations, 1950

By Patrick Stirling, Barrister-at-Law.

Since the publication[1] of the able comparison by Mr. Ernest Collins of the alternative methods of dealing with the problem of slum clearance provided by the Housing Act, 1936, and the Town and Country Planning Act, 1947, the appearance of the Town and Country Planning (Grants) Regulations, 1950,[2] has established the position under the latter method with more precision. It can, however, fairly be added that these Regulations have not only established an exceptionally elaborate code, but will also necessitate the most complex calculations and so present local authorities, notwithstanding much valuable guidance from technical officers, with a problem of the greatest complexity when they try to make a reliable comparison between the two methods available.

After a year of experience a fresh consideration of some of the implications of the Regulations may be justified in view of the part that financial considerations must play in the preparation of the statutory development plans. There can be little doubt that one of the results of the regulations will be to compel local authorities to carry an unduly large share of the cost of the bringing the layout and density of built-up areas into conformity with modern town planning standards; while it is also here suggested that the decision to " weight " the grants for " blight " or " obsolescence " ignores the Local Government Act, 1948, which fundamentally altered the financial structure of local government and established a scheme whereby any authority whose resources fall short of a national datum will receive added revenue to make up for the deficiency. Local planning authorities will, no doubt, do their best to ensure that their planning proposals are compatible with their financial resources, but inadequate grant provisions may exercise a crippling effect on the preparation of adequate planning proposals for the next twenty years.

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[1] [1949] J. P. L. 624.

[2] SI 1950, No. 88; [1950] J. P. L. 207.

The power to pay grants.

The main provisions of the Grants Regulations empower the Minister to pay grants to local authorities towards their expenditure (approved by the Minister) incurred on the acquisition and clearing of land which is :—

(a) land acquired for redevelopment as a whole in:—
  (i) areas of extensive war damage,
  (ii) areas of bad layout or obsolete development;
(b) land acquired for the relocation of population or industry—overspill land—or for the replacement of open space made necessary by the redevelopment of such areas;
(c) derelict land acquired for the purpose of bringing it into use.

These grants do not provide financial assistance towards the cost of redeveloping such areas, but stop at the point where the land is cleared, serviced and ready for redevelopment.

The acquisition and redevelopment as a whole of a built-up area, such as is envisaged in the regulations, may often result in a capital loss to the local authority due to a proposed change of use in this land. This may occur where it is proposed to use high value land for a lower value use such as lower density housing, educational building purposes or the provision of new open space.

The rates of grant.

In the case of "blitz" areas the rate of grant will be 90 per cent. for the "dead period" of up to five years (with a possible extension to eight years) and 50 per cent. for the remainder of the sixty-year loan period, and the grant period will run for sixty years from one year after confirmation of the compulsory purchase order for the redevelopment unit. In the case of "blight" or "obsolescence" the rates of grant will vary according to the alleged poverty or wealth of the local authority, the test for which is whether or not its rateable value per head of weighted population exceeds the average for similar local authorities. It has been calculated that capitalised over the period the grant for "blitz" areas is equivalent to approximately 54 per cent. of the loss. In the case of areas of "blight" or "obsolescence" the annual grant if capitalised may be equivalent to as little as 23 per cent. of the loss. The grant for "overspill" areas will be the same as that for the redevelopment areas with which they are associated.

The theory underlying this scheme appears to be that local authorities are in need of a higher rate of grant during the early years when heavy expenditure is being incurred on acquiring land and clearing the buildings and at a time when little, if anything, is being received by way of revenue. It is assumed that a lower rate of grant is needed later in the process, when the land is ready for redevelopment and income will again begin to accrue. Provision is made for grants, during the early years, to be calculated in all cases as a percentage of the annual debt charges on the whole of the expenditure incurred by the authority, which would be necessary to extinguish the capital outlay. During the remaining years of the sixty-year grant period, grants will be calculated on the annual debt charges necessary to amortise the loss which arises from the destruction of values by disturbing businesses, demolishing buildings and services and putting the land to less valuable use.

Under s. 94 grants are made available towards expenditure incurred on buying land for public open spaces outside redevelopment areas and in enforcing planning control. The approval of the Minister must be obtained for any action likely to involve compensation. It will be necessary to satisfy the Minister that there is a present need for the action on planning grounds or a future need which would be jeopardised if the proposed action were not taken. The rates of grant are those for the last periods of the scales for blight and may be as little as 20 per cent.

Reg. 7 (5) also provides additional grant where planning redevelopment is particularly burdensome: this relief, however, applies only to areas of blight or obsolescence and is not payable to authorities which receive the maximum rate of grant in respect of the losses. The grant is payable where the expenditure in respect of losses on redevelopment (falling on the rate), after allowing for the appropriate percentage rate of grant, exceeds the product of a sixpenny rate and is in the form of a 10 per cent. supplement calculated on the gross charge causing this excess.

The value, however, of the grant system now in operation is, in many cases, considerably less than appears from the mention of 90 per cent. and 80 per cent., while the complicated and elaborate calculations demanded and the meticulous control exercised by the Minister can only be fully appreciated by a reference to the Explanatory Memorandum and Ministry Circular No. 79. It can now reasonably be argued that the method of assessment prescribed is unfair to many authorities and the following points must be noted if a fair comparison is to be made with the position under the Housing Act, 1936.

Relation to equalisation grants.

It should be borne in mind in the first place that authorities with a low rateable value per head of population are now in receipt of an equalisation grant under the Local Government Act, 1948, which is paid to those counties and county boroughs whose rateable value per head of population (weighted to take account of the number of children and, in counties, sparsity) is below the average for England and Wales. Each such authority benefits, by way of equalisation grant, by the receipt of such a sum as will reduce its rate poundage to what it would be if its rateable value were equal to the average rateable value for the country. Thus, when a local authority has received its equalisation grant, its rateable value has, in theory, been brought up to the average for the whole country. It would, therefore, appear difficult to justify weighting service grants and to make a higher rate of town planning grant to authorities with a low rateable value. It is of interest to note that health service grants and grants in respect of the maintenance of the fire service are now at a flat rate of 50 per cent. It would appear that it is unnecessary and unjust to weight town planning grants if the equalisation grant scheme is functioning properly.

Theoretical assumptions.

It should be borne in mind, in the second place, that the calculations in many instances are based on theoretical assumptions and whenever practice differs from theory the local authority will tend to suffer financially. It is assumed, for example, that all the properties involved in a comprehensive redevelopment will be acquired and cleared ready for redevelopment within five years, with a possible extension. If for any reason this cannot be achieved, the expenditure involved will " flow over " into the lower grant periods and the local authority will only receive grant at the lower rate. It also appears to be assumed that sites for redevelopment will earn revenue as from the earliest of a number of dates. If one of the later dates operates, the local authority will be left to bear debt charges for the intervening period without grant.

"Additional Burden" grants.

Reference has already been made to the additional grant available where planning redevelopment is particularly burdensome. The poorest authorities are those which receive the maximum rate of grant and therefore do not qualify. The following example will give some idea not only of the calculations required but also of the narrow limits of the scheme :—

Assumptions—(i) The product of a 6d. rate is £30,000; (ii) The Borough Council is in grant category II (70, 50, 40).

A. During the first five years of the grant period the Borough Council would receive grant equivalent to 70 per cent. of the loan charges. The gross amount which, reduced by 70 per cent. grant, is equivalent to a 6d. rate of £30,000, is £100,000. Thus, in order to qualify for the "additional burden" grant, the Borough Council would have to incur loan charges of over £100,000, equivalent to a capital outlay of £2,800,000.

	£
Assume the annual loan charges amount to (equivalent to capital outlay of over £3¼ m.)	120,000
Gross amount which reduced by 70 per cent. grant is equivalent to a 6d. rate of £30,000	100,000
Loan charges in excess of net 6d. rate burden	20,000
"Additional burden" grant 10 per cent.	£2,000

Annual grant during first five years would be 70 per cent. of £120,000 = £84,000 plus £2,000 "additional burden" grant. The Borough Council would have to meet £34,000 per annum from rates.

B. During the second five years of the grant period the Borough Council would receive grant equivalent to 50 per cent. of the annual loan charges. £60,000, reduced by grant of 50 per cent, is equivalent to a 6d. rate of £30,000. Thus, to qualify for the "additional burden" grant, the annual loan charges during this period must exceed £60,000. By the time this period commences normally the land will have been acquired and cleared and appropriated out at its new use value and the loan charges will be calculated on the difference between the cost of acquiring, etc., and the value of the land for the new use. The loan charges would not exceed £60,000 unless this difference or loss exceeded £1,650,000.

	£
Assume the annual loan charges are (equivalent to a loss of £1$\frac{3}{4}$ m.)	63,000
Gross amount which reduced by 50 per cent. grant is equivalent to a 6d. rate ..	60,000
Loan charges in excess of 6d. rate burden	3,000
" Additional burden " grant 10 per cent.	£300

Annual grant during second five years would be 50 per cent. of £63,000 = £31,500 plus £300 " additional burden " grant. The Borough Council would have to meet £31,200 per annum from rates.

C. During the remaining fifty years of the grant period the Borough Council would receive a 40 per cent. grant. The gross amount which, reduced by 40 per cent. grant, is equivalent to a 6d. rate of £30,000 is £50,000 and to qualify for " additional burden " grant the annual loan charges must exceed £50,000. Loan charges during this period, as in B above, would be related to the loss.

Applying the formula of example B :—

	£
The annual loan charges	63,000
Gross amount which reduced by 40 per cent. grant is equivalent to 6d. rate	50,000
Loan charges in excess of 6d. rate burden	13,000
" Additional burden " grant 10 per cent.	£1,300

Annual grant during the remaining 50 years would be 40 per cent. of £63,000 = £25,200 plus £1,300 " additional burden " grant. The Borough Council would have to meet £36,500 per annum.

On the assumption that a 1d. rate produced £5,000, a Borough Council in the lowest but one category for grant purposes would have to undertake a redevelopment scheme of at least £3 millions in order to qualify for the "additional burden" grant. In such a case the "additional burden" grant would be less than one-twentieth of the normal s. 93 grant.

Conclusion.

Finally, it may be said that while the government only pays a proportion of the loss incurred when land is put to a less profitable use on redevelopment, the Central Land Board will levy a 100 per cent. development charge where new sites are acquired by the displaced development. If a local authority should buy a factory site in an area to be redeveloped, it does so with the aid of grant only. The development so displaced will need to be re-established elsewhere and, in many cases, on a site which was less intensively used before. The whole of the increase in value of the new site accrues to the government by way of development charge.

It is suggested that there is a need for the operation of the present grants system to be reviewed in the light of experience gained from the preparation of the development plans, as indicated above, especially in relation to areas of comprehensive redevelopment.

Questions of Law in the Assessment of Compensation for Compulsory Acquisition

By Harold J. J. Brown, Barrister-at-Law

In assessing the compensation payable upon the compulsory acquisition of land, questions of legal interpretation of some difficulty from time to time arise. It is an unfortunate result of the complexity of this branch of the law that the dispossessed landowner may find that his legal right to compensation is, in some aspects at least, a rather uncertain one. Apart from the hazards and vagaries which are inseparable from the process of valuation even when the facts and principles upon which the value is to be computed are known and clear, he may be faced with uncertainties which even qualified legal advice cannot altogether resolve, as to the principles upon which the computation should be assessed.

In the event of the landowner and acquiring authority being unable to agree as to the amount of compensation payable, the question will fall to be determined by the Lands Tribunal, and there is a right to require the Tribunal to state a case on a question of law for the decision of the Court of Appeal (s. 3 (4) of the Lands Tribunal Act 1949). In at least one case [1] the Lands Tribunal have themselves indicated that where the dispute between the parties turns largely upon a question of law it is desirable for the claimant, in his own interests, to be legally represented before the Tribunal. It is also necessary, of course, that he should appreciate the possibility of appeal, and the probabilities or otherwise as to success thereon.

The exclusion of development value from market value: s. 51 (2) of 1947 Act.

A question of basic importance to a great many cases arises on the decision of the Lands Tribunal in *Lester and*

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[1] *Hyatt* v. *Dover Corporation* (1951), 2 P. & C. R. 32. This case is referred to below, p. 449. See also *Armstrong* v. *Minister of Transport* (1951), 2 P. & C. R. 36.

Jones v. *Secretary of State for War.*[2] The acquiring authority had served notice to treat on March 4, 1949, hence compensation fell to be assessed under rule (2) of s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919, *viz.* :

> The value of land shall . . . be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise. . . .

modified, however, by s. 51 (2) of the Town and Country Planning Act, 1947, which requires the value of the interest to be

> . . . ascertained on the assumption that planning permission would be granted under Part III of this Act for development of any class specified in the Third Schedule to this Act, but would not be so granted for any other development. . . .

The above provisions, which must be read together, require the value of the property to be assessed having regard to the actual " market " for the property which would have existed on the date of notice to treat, if modified by an assumption that planning permission would not be granted except for Third Schedule development. But who is to make this assumption? Even apart from s. 51, the " market " would be rather a notional one for there would in fact have been no offer to sell the property, and the demand which there would have been had such an offer been made would have to be estimated on the available evidence. It is submitted that the effect of the assumption which is required to be made by s. 51 (2) is that the market must become a completely notional one, in which the prospective purchasers are the same people as would actually have formed the market, but all of whom believe that no planning permission will be given for other than Third Schedule development. It may, of course, be necessary to make certain further assumptions under other statutory provisions such as ss. 52, 53, 54 of the Act of 1947, or the other rules in s. 2 of the Act of 1919, and these will result in the market which must be considered being even more unrelated to any actual position.

It may, however, be argued, albeit rather tenuously, that this does not necessarily exclude all value attributable to development other than that specified in the Third Schedule. A prospective purchaser having in mind some development of the land, might on that account be prepared to pay a higher price, notwithstanding that he knew he could not obtain planning permission therefor. The section does not require it to be assumed that an enforcement notice would necessarily be served in respect of the development if it were carried out without planning permission. Indeed, it may be argued that if it were inoffensive development it is probable that no enforcement action would be taken, and no question of development charge might arise either as a matter of valuation or under the Exemptions regulations. Or again, it was recognised by the High Court in *Sampson's Executors* v. *Nottinghamshire County Council* (1949), 1 P. & C. R. 1,[3] a case under s. 55 of the Act, that land may have a certain value above its ordinary "existing use" value owing to the effect on the prospective market for the land which the possibility of carrying out certain Third Schedule development might have. But considerations such as these, whatever weight should be placed upon them—and it is not suggested that they would greatly affect the valuation in a normal case—do not derogate from the statutory assumption required to be made by s. 51 (2).

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[2] (1951), 2 P. & C. R. 74.

In the *Lester and Jones Case*, garages and other buildings had been erected without interim development permission after the date of a 1932 Act resolution to prepare a planning scheme, and although in February, 1950, planning permission for continuance of this development for a period of five years was granted by the Minister on appeal, notice to treat had been served by the local authority in March, 1949, long before that permission was granted. After setting out this town planning position, the decision of the Lands Tribunal states that

> As far as the planning permission is concerned, however, it appears from the provisions of s. 51 of the Act of 1947 that it has to be assumed that it would not be granted, but the position is obscure and I am not satisfied that persons in the local market would, at the date of the notice to treat, have been sufficiently acquainted with the details of planning legislation to be deterred from purchasing the property.

The Tribunal apparently have had regard to what, apart from s. 51, the market for the property at the date of notice to treat would have been, modified so far as it would in fact have been modified at that date by the *actual* knowledge which the prospective purchasers would have had of the provisions of the Act. If this means that some or all of the prospective purchasers may be assumed not to have believed that planning permission for other than Third Schedule development would have been refused, this would appear to be contrary to the requirements of s. 51 (2), for if it is not the prospective purchasers who are to be regarded as having assumed that planning permission cannot be obtained, by whom is this statutory assumption to be made? Such a basis of assessment would appear to be contrary to the decision of the Divisional Court in *Sampson's Case, supra.*

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[3] See especially the remarks of Lynskey. J., at p. 9.

This statement of the Tribunal may, however, be justified if the effect of s. 51 (2) is that although it must be accepted that the notional prospective purchasers assumed that planning permission for the garages would be refused by the local planning authority and Minister, this does not imply that they must be assumed to have thought that enforcement proceedings would have been taken to require discontinuance of the development. In the absence of any authoritative ruling it would be very unwise to be dogmatic as to how a court would construe s. 51 (2)—suffice it to say that this interpretation is not contrary to any specific assumption which the Act requires to be made. If it is a correct interpretation it is necessary to look, as the Lands Tribunal have done, to what in fact would have been the assumptions which would have been made by those persons who would have formed the market for the property, in relation to whether the development would have been permitted to continue, although their views must, apparently, be notionally modified by an assumed knowledge that the planning application would be refused.

Special suitability: the Pointe Gourde case: rule (3) of s. 2 of 1919 Act.

A further question of legal interpretation arises from the decision of the Lands Tribunal in *Lester and Jones* v. *Secretary of State for War, supra.* In assessing the compensation for certain garages forming part of the acquired property, the Tribunal had regard to evidence of an offer to lease the property which had been made by the county Territorial Army Association prior to the date of notice to treat; and in assessing the compensation for factory premises, the remainder of the acquired property, they had regard to the needs of two manufacturers who owned adjoining premises. In both cases the Tribunal held that the value which resulted to the property from such requirements should be reflected in the compensation payable for the premises, and that, having regard in both cases to the decision in *Pointe Gourde Quarrying and Transport Co., Ltd.* v. *Sub-Intendent of Crown Lands*, [1947] A. C. 565, such value was not excluded by rule (3) of s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919, the material part of which is as follows :

> The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government Department or any local or public authority. . . .

It is perhaps helpful to bear in mind a simple example of the operation of rule (3) such as where agricultural land fronting on a road is acquired by the local authority for the purpose of widening the road. No compensation in excess of the agricultural value will be paid, for although there will be a special demand for the land for the purpose to which it is to be put, the land could be applied to that purpose only in pursuance of statutory powers.

In the *Pointe Gourde Case*, which turned upon the meaning of the word " purpose " in the rule, the land acquired was used for quarrying purposes, and was especially valuable for this purpose because it was near to a naval base under construction. It was held by the Judicial Committee of Privy Council that it was only a purpose to which the land itself—as distinct from its products—could be put (*viz.*, in this case the purpose of quarrying), which could be a purpose within the meaning of the rule and which had to be excluded from consideration if a purpose of the kinds specified by the rule. The land in this case was, *indirectly*, suitable for the purpose of the construction of the naval base—a purpose as specified in the rule—but is was held that the effect of the rule was to exclude special suitability for such a purpose only if the value attributable thereto would result from the land itself being applied to that purpose, whereas the value in fact arose from the products of the land being applied to the purpose.

(There was a further point in this case—the increase in value of the land due to the scheme underlying the acquisition was excluded on the principle that increase in value consequent upon the execution of the undertaking in connection with which the purchase is made, must be disregarded.[4])

How then do these rules apply to the offer made in *Lester and Jones' Case* by the Territorial Army Association, and the requirements of the adjoining owners in that case? The purpose for which the Association required the garages was to continue to use them as garages, and since they had been used previously for this purpose and continued to be so used although not acquired by the Association, it is clear that they were not required for a purpose within the meaning of rule (3). The rule therefore did not apply, and the offer of the Association could properly be taken into account in assessing compensation. The *Pointe Gourde Case* does not appear to be relevant.

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[4] *South Eastern Ry.* v. *London County Council*, [1915] 2 Ch. 252, at p. 258.

Similar considerations apply in the case of the factory, for the purpose for which it would be required by the adjoining owners would be for continued use as a factory, and this is clearly not a purpose within rule (3). On the facts stated in the decision of the Tribunal there were at least two prospective purchasers who were not public authorities who required the property, and as pointed out in an article in this Journal a few months ago,[5] special suitability or adaptability for any purpose can be excluded by the rule only if there would be *no* market for that purpose apart from the needs of *a* particular purchaser who needs it for that purpose.

The rule in the *Pointe Gourde Case* is, indeed, a rule which will only apply in unusual circumstances analogous to the circumstances in that case. It is not relevant unless the land indirectly has a special suitability or adaptability for a purpose of a kind specified by rule (3), such suitability or adaptability resulting from the use to which the products of the land, as distinct from the land itself, can be put.

Application of "site value" basis for war-damaged unfit house: s. 53 of 1947 Act: para. 9 of Sched. V to 1944 Act.

In *Hyatt* v. *Dover Corporation*[6] a purchase notice had been confirmed in respect of a war-damaged shop and dwelling-house at Dover for which a war damage payment on cost of works basis was payable, and the Dover Corporation were accordingly deemed under s. 19 (2) to have served notice to treat on the date directed by the Minister, *viz.*, April 25, 1949. Since the parties were agreed upon valuations of the property on alternative bases of assessment, the only question was whether or not the compensation fell to be assessed having regard to s. 53 of the Act of 1947, which normally applies when land which is compulsorily acquired attracts a converted value payment—*i.e.*, when the appropriate war damage payment would apart from the compulsory purchase be on cost of works basis—and which diverts such payment to the acquiring authority but requires the compensation to be the value of the property as if the whole of the damage had been made good at the date of notice to treat. On the answer to this question depended whether the sum to be awarded as compensation was to be £160 or £700.

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[5] "More Miscellaneous Comments: Special Purchasers", by W. A. Leach, [1951] J. P. L. 86.

[6] (1951), 2 P. & C. R. 32.

The Lands Tribunal held that s. 53 did not apply because an order declaring the house to be unfit for human habitation and not capable at reasonable expense of being rendered so fit had been submitted to the Minister of Health shortly before the deemed date of notice to treat, and confirmed shortly after that date. It was held that by virtue of s. 44 (4) of the Act of 1947, para. (9) of Sched. V to the Act of 1944 as enacted in Sched. XI to the Act of 1947 applied, and the compensation was to be site value only.

There could be little doubt that the provisions of Part IV of the Act of 1947, which includes s. 44 (4), were applicable in this case, for s. 19 (2) states that when a purchase notice is confirmed " the council shall be deemed to be authorised to acquire the interest of the owner compulsorily in accordance with the provisions of Part IV of this Act ". Also, where the land was subject on the appointed day to a declaratory order under the Act of 1944, as was here the case, para. 17 of Sched. X to the Act of 1947 states that

> the provisions of Part IV of this Act shall apply as if the land were comprised in an area defined by the development plan under Part II of this Act as an area of comprehensive development, and were designated as subject to compulsory acquisition. . . .

S. 44 (4) of the Act accordingly required para. 9 of Sched. V to the Act of 1944 as enacted in Sched. XI to the Act of 1947 to have effect, and *if the conditions set out in para*. 9 (1) *of that Schedule were satisfied* the compensation properly fell to be assessed " in like manner as if it had been land purchased compulsorily under . . . Part III of the Housing Act, 1936, as being comprised in a clearance area "—*viz.*, at site value only.

But were the conditions of para. 9 (1) in fact satisfied in the circumstances of this case? That paragraph applies only to a " house " and only if the house is comprised either (a) in land designated by a development plan as subject to compulsory acquisition, or (b) in land which is proposed to be acquired compulsorily under s. 37 (2) or s. 38 (2) of the Act of 1947.

"House" is defined as having the same meaning as in the Housing Act, 1936, and having regard to cases decided under that Act it may be that the premises in question—a combined dwelling-house and shop—could properly be held to be within the definition. But no question of alternative (b) arose in this case, and no development plan was in fact in force; and the Tribunal were able to hold that the conditions were satisfied only by deciding that the premises were comprised in land designated by a development plan by virtue of para. 17 of Sched. X to the Act of 1947, set out above.

But whilst, as a result of that paragraph, Part IV of the Act and hence s. 44 (4) applies "as if" the land were designated as subject to compulsory acquisition in a development plan, there is nothing to say that the land shall be deemed to be so designated for all purposes; and it is submitted that for the purposes of provisions of the Act other than those in Part IV—and provisions of Sched. XI are not part of Part IV although applied thereby—it cannot be assumed that the land is designated as subject to compulsory acquisition when in fact it is not so designated. It is only Part IV of the 1947 Act, including s. 44 (4), to which para. 17 of Sched. X refers. S. 44 (4) brings in para. 9, but that paragraph will apply only where the conditions therein are satisfied, and because s. 44 (4) applies as if the land were designated as subject to compulsory acquisition it does not follow that under para. 9 (a provision of Sched. XI) the premises are comprised in land so designated by a development plan.

If this is so, it follows that no regard should be paid to para. 9 in the circumstances of this case, and the premises should have been valued not merely on their site value but on their reinstated value under s. 53 of the Act of 1947, the difference between the two values being that between £160 and £700.

Disturbance—Fees on purchase of other property: rule (6) of s. 2 of 1919 Act.

In *King* v. *Bristol Waterworks Co.*[7] and *Mapstone* v. *Bristol Waterworks Co.*[8] difficult questions as to the compensation payable for disturbance fell to be determined by the

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[7] (1951), 2 P. & C. R. 18.

[8] (1951), 2 P. & C. R. 1.

Lands Tribunal. The first of these cases was a claim in respect of the compulsory acquisition of some 17½ acres of pasture land, and in addition to the value of the land itself the owner claimed £100 for " fees and stamp duties on purchase of other property or equivalent re-investment of the capital moneys ". The second case was a claim in respect of a farm-house and buildings and approximately 102 acres of land and included claims for £337 11s. for " legal fees and stamp duty " in purchasing another farm, and £59 14s. 6d. for " valuer's fees in connection with ingoing valuation " at that farm.

In considering whether sums such as these should be allowed, the legal basis upon which compensation is payable in respect of disturbance should be borne in mind. Under the Lands Clauses Acts no specific right to compensation for disturbance was granted, but formerly, under those Acts, compensation was payable in respect of the full value of the land to the owner (and also for severance and injurious affection) and it followed from this that compensation was payable in respect of all loss that he suffered as a result of the acquisition —although it was customary to assess as a separate part of this amount the value of such matters as the loss he suffered from disturbance of his business. It is clear that the capital value of any additional cost necessarily incurred in respect of purchasing new premises would have been included—*Metropolitan Ry.* v. *Burrow* (1884)[9]—and presumably would have included the fees and duties claimed in both of the cases referred to above.

But to what extent has that position been altered by the Acquisition of Land (Assessment of Compensation) Act, 1919? That Act abolished the old basis of the value of the land to the owner, and in general replaced it (rule (2) of s. 2) by valuation according to market values. The right to " compensation for disturbance or any other matter not directly based on the value of the land " was preserved by rule (6), but the intention of the section appears to be not to allow the full " equivalent cost of reinstatement " except in the very limited class of case provided for in rule (5), and the right to compensation for disturbance is limited to cases where the particular disturbance can be said to be not directly based on the value of the land. This position has not been affected by the Town and Country Planning Act, 1947.

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[9] *The Times*, November 22. The judgments are printed in *Cripps on Compulsory Acquisition of Land*, Vol. 2, p. 1811.

In these circumstances it is then necessary to consider whether the fees and duties in question are " directly based on the value of the land " or otherwise are such that they can be claimed under rule (6). This is a very difficult question and very little assistance in determining it can be obtained even from the wealth of judicial learning on this rule and on compensation for disturbance in general which fell from the Court of Appeal in *Horn* v. *Sunderland Corporation*, [1941] 2 K. B. 26. It would appear from the two cases referred to above, however, that the Lands Tribunal have arrived at the conclusion that such fees may at any rate be payable in certain circumstances.

In *Mapstone's Case* the claims for legal fees, stamp duties and valuer's fees incurred in the purchase of a new farm were allowed by the Tribunal, with a reduction from the amount claimed in the case of the valuer's fees. The reason given for allowing the claim was based upon the claimant's personal circumstances, the Tribunal stating that they would award the sums since the claimant had incurred them in re-establishing himself on another farm, and had thereby mitigated the claim he would otherwise have had for disturbance. It is not altogether clear from the Tribunal's decision as to what legal basis they acted on, but if the decision is based upon a correct view of the law, the further question then arises as to why the same principles should not apply in *King's Case*.

In *King's Case* the sum of £100 claimed for fees and stamp duties on the purchase of other property or equivalent reinstatement was not allowed. The reason given was that the claimant had not himself farmed the land but had obtained possession before the date of notice to treat and would receive in respect of the land itself compensation for its value with vacant possession. The Tribunal reasoned that since the vacant possession value could otherwise only have been obtained by the owner selling the land and incurring the costs of re-investing the capital money, nothing above the vacant possession value should be paid to him. Whatever the merits of this argument, however, it is difficult to see any legal basis on which it can rest. The question whether the claimant had or had not farmed the land himself does not appear to be relevant, and since he was in possession at the date of notice to treat he was entitled to the vacant possession value in respect of the land. (The notional lease provisions of s. 52 of the Act of 1947 do not apply to agricultural land and buildings.) In order to reinstate himself in a similar position on equivalent land he would have to pay not only a similar amount but in addition the fees and stamp duties which were the subject-matter of the claim under consideration.

If sums such as these can properly be awarded—and as indicated above, an examination of the legal position seems to throw grave doubts upon whether they can be—the legal reason for refusing to award them in *King's Case* is not at all apparent.

Costs: s. 3 (5) of the Lands Tribunal Act, 1949

In several cases the Lands Tribunal have ordered one or other of the parties to pay the costs of the other party. The claimant will not normally have such an order made against him unless the acquiring authority has previously made an unconditional offer of an amount not less than the sum awarded by the Tribunal, or a proper claim has not been submitted, or the claim has been adjudged to be wholly or largely unfounded.[10] Unless the award is of an agreed sum it will normally be of an amount to be taxed by the Registrar of the Lands Tribunal.

A somewhat different reason for awarding costs against the claimant appears in *Armstrong* v. *Minister of Transport*,[11] where the claimant was ordered to pay the acquiring authority ten guineas costs because not only had she not prepared a claim in accordance with the statutory requirements but also she had adopted an unco-operative attitude towards the acquiring authority and the Tribunal. The amount awarded was, however, small, and no doubt represented the costs incurred in the proceedings by the authority.

In *Fooks* v. *Minister of Supply*,[12] however, the Tribunal have gone much further, for in view of the attitude adopted by the claimant, and his failure to deliver a claim or negotiate with the acquiring authority, and his declared intention not to accept the compensation or to execute a conveyance, the claimant was ordered to pay the acquiring authority 120 guineas costs, to be reduced to 50 guineas if he should deliver an abstract of title and execute a conveyance.

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[10] See *Kempster and Williams* v. *Watford Borough Council* (1950), 1 P. & C. R. 114; *Fox and Litchfield* v. *Southampton County Borough Council* (1950), 1 P. & C. R. 127; *Klingelhoefer and Klingelhoefer* v. *Ilford Borough Council* (1951), 2 P. & C. R. 93.

[11] (1951), 2 P. & C. R. 36.

[12] *Post*, p. 487

The authority for all these orders as to costs is s. 3 (5) of the Lands Tribunal Act, 1949, which provides that—

> Subject to the following provisions of this section, the Lands Tribunal may order that the costs of any proceedings before it incurred by any party shall be paid by any other party and may tax or settle the amount of any costs to be paid under any such order or direct in what manner they are to be taxed.

The following provisions of the section provide for rules to be made regulating the fees chargeable for proceedings before the Tribunal, and rules are applied (s. 3 (7) and Sched. I) regarding the awarding of costs when an offer to pay has been made by the authority and not accepted by the claimant, or an offer to accept a certain amount has been made by the claimant and not accepted by the authority, or when a detailed written claim has not been duly submitted by the claimant. But the power to award costs conferred by s. 3 (5) is not extended by these further provisions.

It seems clear from the award in *Fook's* case that at least 70 of the 120 guineas costs were in the nature of a penalty to be incurred by the claimant if he persisted in refusing to execute a conveyance, or at least that they were imposed in respect of the additional trouble which would be incurred by the acquiring authority from such persistent refusal by the claimant.

From the legal point of view the question must be whether such costs are (1) costs of proceedings before the Lands Tribunal, and (2) costs incurred by the acquiring authority; for if either of these requirements is not fulfilled, the award appears to be not covered by s. 3 (5), and accordingly to be *ultra vires*. The amount which Mr. Fooks was required to pay was expressed to be in respect of costs incurred by the acquiring authority, but in view of the expressed reasons for awarding this sum, especially that the claimant had refused to execute a conveyance, it seems to be doubtful whether the whole of this amount is in respect of the costs of proceedings before the Tribunal.

Development Charge on Various Types of Property

By W. A. Leach, F.R.I.C.S.

Scope.

In Part III of the Central Land Board's Practice Notes[1] (paras. 64–103) the estimation of development charge in respect of a number of developments is more particularly explained. Some of these developments are herein considered. Paras. 122–126 relating to limited period permission are also examined.

There are six major points on which the Notes are open to criticism as indicated in the article "The Theory of Development Charge Reconsidered" at [1951] J. P. L. 256, *viz.*,

1. The land to be valued should be that comprised in the planning permission. This point may yet be settled by the House of Lords, the Scottish Court of Session having taken the contrary view in *Sinclair-Lockhart's Trustees* v. *Central Land Board* (1950), 1 P. & C. R. 195, 320. See however, para. 108 of Practice Notes.

2. Regard must be had to the conditions of the permission, a matter little considered in Practice Notes.

3. A man buying something which would have a special value to himself but not to others does not offer or expect to have to pay a price representing the whole of that value, nor does a willing seller expect to get it.

4. Neither refusal nor consent value is limited on the assumption that no permission would in any circumstances be granted. The difference between consent and refusal values is that consent value assumes the benefit of the permission actually granted could be adopted without payment of a development charge whereas refusal value recognises it cannot be adopted without such payment. The market for refusal value is not limited to those who do not wish to develop. All possible bidders for the land with and without the permission are in the market for purposes of refusal value, and all possible bidders for the land with the permission are in the market for purposes of consent value.[2]

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[1] [1949] J. P. L. 252 ff.

[2] With all respect to Mr. Turing ([1951] J. P. L. 327), I do not withdraw from my view that "refusal value" is a misnomer. The expression only arises from an evangelistic zeal in the application of certain of the

5. The possibility of other consents being granted must always be kept in view. If permission is granted for the extension of a factory over adjoining land it is an important consideration whether permission would be granted for a new independent factory on that land. If there is a possibility of general factory user the person wishing to extend may be bidding against a general demand, but if the permission is only granted (as some have been granted) because it would be unreasonable not to allow the extension of an established industry, the special purchaser aspect arises as in 3, *supra.*

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provisions of the Act. The Act does *not* say, however (except for the purposes of the hypothetical market values under Parts V and VI of the Act) that the market value of land is no greater than its "existing use" value, and the only amendment I would make on p. 261 is to add to para. 3, line 7, after "it is tied" the word "irrevocably".

Under Part VII of the Act the value of the land has to be found without any qualifications as to existing use.

The two valuations of s. 70 (2) both arise out of the granting of a permission. Neither valuation is of any consequence without the permission which is a factor in both, *viz.*, (a) what is the land worth if the benefit of the permission can be taken without payment, and (b) what is the land worth if payment has to be made for the benefit of the permission.

The effect of (b) is that all those interested in the development authorised by the permission are bidders for the "value without the benefit of the permission", whereas under the "refusal value" concept (that in no circumstances would the permission be granted) the only bidders would be those having no interest in development. A market in which premises are deemed to be tied irrevocably and for all time to one use is something so alien to practical experience that it can only be assumed under express instructions, and even under Part VI, where that express instruction exists, there is official reluctance to admit its implications. For example, if shop premises in an ordinary shopping position were offered for sale restricted for all time to use as a restaurant or office without any prospect of a change of use, no reasonably prudent and knowledgeable buyer would offer anything like the same price as he would for the same premises with a use in class I of SI 1948, No. 954 (which still applies to Part VI claims). But the provisions (or lack of them) as to development charge do allow the buyer "without the benefit of the permission" to entertain the *prospect* of a change, and although that is not the same thing as the flexibility which goes with a right to change, it does add something to the market value of the premises. Add to that a permission has been granted so that even hesitant buyers need not hold back and the value "without the benefit" becomes firmer still. Where there is only one bidder the price will not be as high as where there may be ten bidders. By bringing in the bidders who have development in view, the possibility is diminished of the value "without the benefit" being fixed at a "reject" price; it is more likely to approach the full economic value of the land with its existing lawful improvements and for its existing lawful use.

From the valuation angle this difference of theory will in many cases make not a scrap of practical difference, but that is no reason when discussing theory for going out of the way to set out or accept the incorrect theory of "refusal value". If there are cases in which it would make a material difference, it is all important that the theory should be accurate. The "refusal value" might also have regard to the bids of those who would be willing to buy to prevent the development, since the rule on which the judgments in *Sampson's Exors.* v. *Nottinghamshire C. C.* (1950), 1 P. & C. R. 1, were based does not apply to valuations under s. 70 (2).

6. Any exemption from development charge which may become attached to a property when a permitted development is carried out should not be negatived by being allowed for in consent value, but the value of all things which will then be " not development " must be taken into account for what they are worth (Practice Notes, para 58 and *cf*. para. 50).

(Alternatively, since the refusal value properly considered *must* include bidders for the permitted development, that value should include the additional price those bidders might be willing to pay for the benefit of any exemptions from development charge which would follow the carrying out of the permitted development. In other words the value of the exemptions might appear in both consent and refusal values and so cancel out.)

Single house and garden (Paras. 64–67).

Reference has already been made to para. 64 (see [1951] J. P. L. 258).

Para. 65 says that the development charge in respect of a permission for a house with a garden above normal size will not be *pro rata* for the excess area of garden. This is, of course, purely a matter of valuation. The benefit of a permission to put one house on a one-acre plot would not, as a rule, be worth as much as that of a permission to put twelve or even two houses thereon.

Para. 66 specifies different types of houses (farmhouses, almshouses, lodges, etc.) and says that although size and situation are material considerations, the owner, occupier, and the terms of occupation are not material. This, however, must be read subject to the conditions of the planning permission. A planning authority might agree, for example, to the erection of a farmhouse where they would not agree to any other residential development. If it is a condition of the permission that the house shall be used as a farmhouse, use as a country residence is not a change of use within any class of the Third Schedule Use Classes Order (or within any exemption of the Development Charge Exemptions Regulations, SI 1950, No. 1233). Permission would be required for the change and would, as a new permission, attract determination of a new development charge under s. 69 (2) of the Act. Similarly special consideration might be given by a planning authority to the provision of almshouses, *e.g.*, greater site coverage or housing density than would normally be allowed, and the permission might be restricted to that use.

If the permission is not qualified the land must be valued for purposes of consent value according to the price it might fetch in any circumstances in which it might be sold without further permission (see "The land to be valued" at [1951] J. P. L. 257).

It may also be noted that the provisions of the General Development Order [3] granting permission for specified developments do not over-ride the conditions of a specific permission granted (art. 3 (2) of the Order), *e.g.*, a permission for a private dwelling-house only with a restriction against enlargement and the erection of other buildings on the land would exclude Class I of the General Development Order; the erection of further buildings would require permission and would be chargeable except as provided for in para. 3 of Sched. III to the Act or exemptions 1 (2) or 1 (4) of the Development Charge Exemptions Regulations.

The general principle is that the benefit of the permission must be valued in terms of the permission as granted. If a possible subsequent *development* (including those permitted by a Development Order) would be free of development charge, the exemption ought not to be taken away by including that possible development in the immediate development charge. Where there is any restriction or condition on the planning permission, the development charge must be calculated with regard thereto.

Para. 67 states that a consent to erect a cottage *in its own garden* in the grounds of a larger house and suitable for a gardener will not attract a development charge reflecting the increase in value of the larger house. If, however, the permission is for a gardener's cottage without an independent curtilage and the plans, the application for permission or the permission itself indicate the cottage to be in the curtilage of a larger house, it is submitted it must be valued (subject to any tolerance due to the main building) as an addition thereto, bearing in mind (a) any restriction on use, and (b) that there may be equally suitable land outside the curtilage so that it may be that the *maximum* value of the benefit of the permission will be related to the value of a dwelling-house free of special restrictions on use on land outside the curtilage. The cost of available alternatives is always an important consideration.

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[3] SI 1950, No. 728; [1950] J. P. L. 432 ff.

Large houses.

Para. 68 considers the change of use of large houses for purposes of residential flats, institutional uses, offices, etc.

Conversion of a building into flats may be exempt from charge, so far as use is concerned,

(a) Under para. 2 of Sched III to the Act.
(b) Under the Development Charge Exemptions Regulations, 1950,[4] exemption 2.

The works of conversion would be exempt under para. 3 of Sched. III, or exemption 1 (2) or (4) of the Exemptions Regulations.

Other free changes of use of dwelling-houses are set out in exemption 3 (2) of the Exemptions Regulations, which may give entry into exemption 3 (6).

Houses for Agricultural Workers (Para. 71).

The Central Land Board have issued a new leaflet, D.1.B. (Revised March, 1951),[5] dealing with development charge on houses for agricultural workers in England and Wales. Presumably the application of this concession to forestry workers' dwellings still applies ([1949] J. P. L. 114).

Briefly the arrangements provide for the postponement of charge, subject to an undertaking being given to pay it if and when the house ceases to be occupied by a member of the agricultural population. The arrangements do not apply to farmhouses.

The postponement can be claimed either: (a) Where a subsidy is payable under the Housing Acts on condition that the house is reserved for agricultural workers; (b) where an improvement grant is payable under the Hill Farming Act, 1946; (c) where the house is to be entered in the valuation lists for rating as an agricultural dwelling-house under the Local Government Act, 1929; or (d) where the applicant can otherwise satisfy the Board that the house is to be occupied by an agricultural worker.

The leaflet, which is obtainable from any of the Board's offices, deals also with smallholders and hostels for agricultural workers, but not with houses built by local authorities.

Since the leaflet was printed the Livestock Rearing Act, 1951, has received Royal Assent. A grant under that Act will afford a qualification in the same way as a grant under the Hill Farming Act, 1946.

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[4] SI 1950, No. 1233; [1950] J. P. L. 609.
[5] [1951] J. P. L. 290.

Garages or Stables in Curtilage of a Dwelling-house (Para. 72).

This will usually fall within the enlargement tolerance of para. 3 of Sched. III to the Act or exemptions 1 (2) or (4) of the Exemptions Regulations. If, however, the tolerances have already been utilised, the charge will be the difference between the value of the land with the benefit of the permission and without that benefit, what is comprised in "the land" depending upon the express or implied terms of the application and the permission. It is important that a permission should be properly framed so that it can be valued for what it is really intended to permit.

Industrial and Commercial Extensions.

Paras. 73 and 74 are quoted here in full:—

> 73. Extensions of industrial and other commercial premises may take many forms, but illustrations may suffice to state the principles the Board propose to adopt:—
>
> A. a factory owner already owned land next door to his factory on July 1, 1948, and obtains planning permission for an extension of his factory buildings on storage ground;
>
> B. the same facts as "A" except that the extension land is bought after July 1, 1948;
>
> C. a warehouse has no direct access to nearby wharfage, and by the purchase of a narrow strip and by obtaining planning permission to turn the strip into a roadway, the owner obtains a valuable access;
>
> D. a factory needs an extra water supply and the owner decides it is cheaper to buy the right to sink a well outside the present curtilage than to take the public supply.
>
> 74. Case A and Case B. will have the same amount of development charge. The Board, in compliance with the principles they are adopting and by the adoption of the "before-and-after" method of valuation as a maximum (para. 40) will assess the development charge in such a way that it does not represent more than the additional value given to the factory or warehouse by the right to extend. But if the Board are satisfied that the value (based upon the special needs of the particular purchaser) of the planning permission on the extension land is worth on a sale less than that produced by the before-and-after method they will adopt the lesser figure.
>
> Cases C and D are examples of the need to retain the element of value attributable to the special needs of a particular purchaser (para. 39). In Case C the planning permission to make the roadway will not increase the value of the strip of land to be used by itself and may well reduce it. But the permission was obtained for the sole purpose of increasing the value of the warehouse, and the owner of the strip with the benefit of that permission could sell the strip for a large price to the owner of the warehouse.

There is too much emphasis here on the "before-and-after" method. In cases A, B and C the simple question as regards consent value is what price would be likely to be realised for the land required for the extension if offered for sale for the permitted operations and use, bearing in mind that the owner or occupier of the adjoining premises may be in the market.

It is not to be assumed, however, that a bidder to whom the land might have a special value would give the whole of that value to the vendor ([1951] J. P. L. 264, 265), and the "before-and-after" method is apt to give an inflated answer. It is a method giving a maximum which may be useful in considering the point at which the hypothetical vendor and purchaser might meet, but it does not necessarily give that point, for the purchaser dealing with a willing seller does not expect to pay away the whole of a special value to himself.

In cases A and B there might be competition for the land for general factory purposes in which case there should be no difficulty in ascertaining its true market value (see observation 5 under "Scope", *supra*).

In case D what the applicant would consider would be the advantages of the supply of water from the well over an augmented public supply. In sinking a well capital is being laid out, and the expenses of the supply should include interest on outlay, depreciation, maintenance, wages, power, treatment of the water, insurances, profit and risk, not forgetting that rising costs sometimes hit a small installation harder than an extensive public supply. The Central Land Board takes no share of the risk and should allow liberally therefor.

It will be observed that case D expressly relates to a well outside the curtilage of the factory, but the principles would be the same inside.

In either case the adventurers might consider, in addition to the relative costs of the supply from the well and a public supply, whether, and if so to what extent, the selling value of the factory with the benefit of the well supply would exceed the value without that supply. If the occupiers of the factory carry on a special process requiring abnormally large quantities of water which would not be required by the majority of other users they might require a bigger allowance for risk to cover themselves in the event of their subsequently removing to other premises. In short the valuation basis may have to be related to the financial stability of one firm and to their intentions as to the future occupation of the premises.

Sports Grounds (Paras. 76–78).

There are three objections to the rule of thumb method of valuation set out in para. 78:

(a) The suitability of land for sports purposes varies very greatly and much depends on the actual use to which the land is to be put, since land might be used by a small club for football with scarcely any preparation although other land might require some measure of draining and re-surfacing. For purposes of cricket far more work might be necessary, especially for the cricket tables. Similarly for tennis courts, if good grass courts for a high standard of play are aimed at, the cost will be substantial.

(b) The cost of the land for sports grounds would before 1948 have depended on the available supply of suitable land and the demand. In some districts it might have been acquired at much less than the rule of thumb value of para. 78 (one quarter of the value of the land for housing purposes). In other areas the demand for sports grounds is such as to give land suitable for that purpose a value at least equal to housing value, although the high cost of draining, soiling, seeding, etc., would today very substantially reduce the value of any land not naturally adapted for the purpose.

(c) The expression "one quarter of the value to erect houses" is not entirely clear. Before 1948 housing land may have been selling at say £300 per acre, but the consent value of the same land today may be £600 per acre, since the competition of owners to sell no longer exists to reduce prices below the value indicated by the residual method of valuation. If the refusal value is £150 per acre, presumably the Board would charge £112 10s. per acre for the use of the land as a sports ground (so that it would cost in all £262 10s. as against £300 before 1948) irrespective of the amount of work required to be carried out to make it suitable for the purpose.

Shops (Paras. 85–87).

Buildings used for the sale of refreshments are now shops (Use Classes Order under s. 12 (2) (*f*), SI 1950, No. 1131). By the same Order a post office is a shop, not an office. An estate agent's office is a shop as "appropriate to a shopping area" (see definition of shop in Use Classes Order, 1950) and an office having regard to its actual use.

Para. 87 of the Practice Notes means that where a use is extended to a part of a building not previously so used, regard should be had to the right (if any) under para. 7 of Sched. III. This right applies where a building (or part of a building—s. 119 (1) of the Act—was occupied on July 1, 1948, by one person for two or more uses, the right being to extend any of these uses by not more than 10 per cent. of the cube then applied thereto at the expense of the other use or uses. A ground floor used as a shop and a first floor used as a workroom by the same occupier, but not wholly incidentally to this shop, would be a case in point, these two together comprising a building; but if the workroom were on the second floor with, say, offices occupied by another person in between, the two non-contiguous parts might each be a building by virtue of s. 119 (1), but could not be one building, and the right of extension would not strictly exist.

A permission may be limited by conditions (s. 14 (1)), *e.g.*, to the effect that a shop may not be used for all the purposes within Class I of the Use Classes Order, 1950, *e.g.*, it may exclude everything other than a shop for the sale of goods by retail. Such a condition would be contrary to the Minister's intentions in making the Use Classes Order, 1950, but there may be exceptional cases where such a course would be proper. Where that occurs the use of the premises as, say, a restaurant, would require permission under Part III of the Act, despite the definition of " shop " in the Use Classes Order, 1950, including a restaurant, and the change of use to a restaurant would seem possibly to attract development charge under s. 69 (2) which imposes liability on " all uses of land for the institution . . . of which such permission (*i.e.*, permission under Part III) is . . . required. It will be remembered that a restaurant is excluded from the definition of " shop " in the Third Schedule Use Classes Order, SI 1948, No. 955, and the change of use is not, therefore, exempt from charge thereunder.

[*To be continued.*]

Possible Future Development in Compensation Cases

By T. A. Blanco White, Barrister-at-Law [1]

It has always been one of the difficulties of the assessment of compensation upon compulsory purchase, to assess the value of the land's potentialities for development. Under the Town and Country Planning Act, 1947, most such potentialities must be disregarded, and the result ought to be to simplify assessment. In a sense, no doubt this is so; but other difficulties arise instead. In particular, the normal process of valuation, that of comparing the views of experienced surveyors to what the land is worth, has to be replaced by complex discussion of hypothetical cases, with the result that mistakes are very easily made.

Value of land surplus to curtilage.

Here is an example.[2] The Lands Tribunal had to assess the value of a piece of land having "Third Schedule" rights to the building of two houses. The frontage of the land, however, was greater than the 100 feet (*i.e.*, 50 feet per house) for which it was considered that a purchaser would pay full building-land value. One question was: what was the rest of the land worth?

The whole of the land had an "existing use" of curtilage of dwelling-houses; and it might have been taken as obvious that the surplus land, if sold with the two building plots, would be worth more than if it were sold alone as agricultural land but less than full building-land value: say half building-land value, splitting the difference; and so the Tribunal held. But they seem to have had some difficulty in finding a legitimate ground for so holding. The ground they give, in fact, is not that there must be a market for houses with large gardens, or anything like that (which would have been a lawful ground), but that the purchasers of the two building plots would have had to buy the extra land (at more than agricultural value) to prevent the vendor from developing it at some later date. This, however, can hardly be a lawful ground for the decision: for by s. 51 (2) of the 1947 Act, compensation ought to have been assessed on the assumption that the vendor would not have been permitted to develop. In other words, the decision conflicts with *Sampson's Executors* v. *Nottinghamshire County Council*, [1949] 1 P. & C. R. 1. Thus we have the Tribunal reaching a sensible answer but failing to justify it: a strong indication that the matter is by no means simple.

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[1] Based on suggestions by W. A. Leach, Esq., F.R.I.C.S.

[2] *Perkins* v. *Middlesex County Council* (1951), 2 P. & C. R. 42.

Effect of Redevelopment Scheme.

Particularly troublesome is the case of land acquired as part of a substantial redevelopment scheme. Here two additional matters have to be considered: first, the date at which future possibilities are estimated, and secondly, the effect of the scheme itself.

Effect of After-Acquired Knowledge.

As to the first, the principle is quite clear: potentialities must be assessed (in so far as the 1947 Act allows them to be considered at all) as they would have appeared to the hypothetical "willing vendor and purchaser" at the date of the notice to treat. The trouble is, that there is always a delay between the notice to treat and the hearing of the case so that everyone concerned in fact has actual knowledge of events over a period after the notice to treat. To what extent, then, can this actual knowledge be allowed to influence the decision?

Here again, a decision of the Lands Tribunal offers an answer[3]: simply to assume that the hypothetical willing buyer and seller will guess right as to the future course of events. In deference, however, to a decision of the House of Lords[4] which appears to suggest that evidence of subsequent events should be entirely excluded, the Tribunal treats these correct guesses as having been made only in relation to "such factors as were recognisable at the date of the notice to treat". Here again, this can hardly be legitimate: at the date of the notice to treat there must have been a possibility that something different would happen, and the "enterprising but prudent operator" ought to be taken to have allowed for this possibility as well as for the possibility that actually was realised. This decision in fact shows two things: first, that this point is not such a simple one, and secondly, that this sort of evidence is apt to be misleading to any but the most experienced judges and is much better excluded altogether.

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[3] *Regents Park, etc., Co.* v. *St. Marylebone Borough Council* (1951), 1 P. & C. R. 394.

[4] *Bwllfa & Merthyr Dare Steam Collieries (1891), Ltd.* v. *Pontypridd Waterworks Co.*, [1903] A. C. 426.

Schemes of which the purchase forms part.

Next, as to the effect of the scheme itself. There is a long-standing rule that compensation must be assessed without regard to any change in value due to the scheme of which the purchase in question forms part. (This in addition to the rule laid down by the Acquisition of Land (Assessment of Compensation) Act, 1919, s. 2 (3), excluding value due to "special suitabilities" of the land in many cases.) The scope of the rule is none too clear (most of the relevant cases are Privy Council cases, the decisions in which are not too easy to reconcile and are not strictly binding in this country), but two propositions are reasonably clear. One is, that what the "scheme" is for this purpose is a pure question of fact for the Tribunal. The other, that although the fact that the scheme has actually been brought into force must be disregarded, the probability that such a scheme would be introduced should be considered in assessing compensation.

A third example is of interest here.[5] This was a case under the transitional provisions of the 1947 Act, relating to a plot of land in the destroyed centre of Plymouth. Under the transitional provisions, the Lands Tribunal had to assume that the pre-war buildings on the actual plot concerned were fully re-instated but that redevelopment of the plot was not possible, while the surrounding area remained devastated but capable of either re-instatement or redevelopment. Obviously, the value of the hypothetical re-instated building depended on the hypothetical dealers' estimate of the likely course of rebuilding of the surrounding area. In fact, the experts on both sides ignored the possibility of the adoption of the Council's redevelopment scheme (although layout plans for it had been published some time before the material date), and the Tribunal worked on assumptions as to the sort of street plan likely to be adopted whatever scheme was employed. Clearly, to base an assessment upon the Council's scheme would have been wrong; but it is arguable that the experts (and the Tribunal in consequence) went too far the other way. It is possible that the hypothetical buyer and seller of the hypothetical building ought to have been assumed to have inspected the Council's layout plans for the area and formed their own opinions as to what was likely to come of them.

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[5] *Fredman* v. *Plymouth Corporation* (1951), 2 P. & C. R. 86.

Injurious affection by an adjacent scheme.

It is almost a relief to turn from this sort of thing to assessment under the permanent provisions of the 1947 Act, with their hypothetical ban on all development, anywhere and at any time, other than Third Schedule development. Even here, however, the same sort of problem may creep in. Consider another example (an imaginary one). Suppose a redevelopment scheme, and a shop just outside it. Suppose that the shop is acquired compulsorily for some purpose unconnected with the scheme. Its value (for its existing use, *i.e.*, as a shop) has been affected by the scheme. Should this be taken into consideration? Note that if it is not, the owner of the shop will in effect receive compensation (or pay betterment) for affection by the scheme.

First, since the shop is not part of the scheme, there is no rule that the scheme must be disregarded entirely. Thus, subject to s. 51 of the 1947 Act, allowance must be made for a fair commercial estimate, made as of the date of the notice to treat, of the effect the scheme is likely to have. By reason of s. 51, all parts of the scheme for which planning permission has not already been granted at the date of the notice to treat are deemed to be permanently prohibited. Apparently, however (note the words "of the land" in s. 51 (2) (*a*)), any parts of the scheme for which planning permission or deemed planning permission is available at that date must be allowed their chance of going through. What happens if this makes nonsense of the scheme is none too clear.

Scope of the statutory assumptions.

The most interesting of the problems arising from the assumptions as to future development prescribed by the 1947 Act, is what may be called the psychological one: that is, what effect is the assumed ban on development supposed to have on the hypothetical buyer and seller? Consider yet another example.[6] A piece of land, the subject of proceedings for compulsory acquisition, was developed without planning permission. Application was made for retrospective permission, which in due course was given; but before the permission was actually granted, a notice to treat was served. At the date of the notice to treat, those in the market for such land would have expected that some such permission would be given. The Lands Tribunal accepted, it would seem (although the contrary is perhaps arguable), that s. 51 (2) required them to assume in assessing compensation that no such permission would be given. The question was, should any allowance be made for the extra value (to a real purchaser) due to the contravening development?

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[6] *Lester and Jones* v. *Secretary of State for War* (1951), 2 P. & C. R. 74. *Perkins* v. *Middlesex C. C.*, cited above, impliedly raises exactly the same point.

The Lands Tribunal expressed itself "not satisfied that persons in the local market would, at the date of the notice to treat, have been sufficiently acquainted with the details of planning legislation to be deterred [by the assumed withholding of planning permission] from purchasing the property". (Accordingly, it awarded compensation upon the basis of an offer, made not long before, for the land in its contravening state and with contravening use in mind.) Now this is an astonishing comment. Clearly those in the market would not have been deterred from purchasing by the absence of planning permission: we know that they would have expected permission to be given, and we know that they would have been right. The same position arises in any case in which the statutory assumption applies: no normal purchaser of land is going to be deterred from buying for development by the provisions of s. 51 (2), for the simple reason that (unless he is unlucky enough to have his land compulsorily acquired) that section will not affect him. Thus some other test than the Tribunal's must be found. It seems clear that the hypothetical buyer and seller must be assumed not only to know that planning permission is not available (and will not become available in the foreseeable future) for any development on the land concerned, but also to act upon their knowledge. Thus the operator who is willing to buy in the hope that something can be done about planning permission must be excluded. So also, one may suppose, must the operator who is prepared to buy in the hope that development, even if never legalised, will escape enforcement proceedings. Thus, for most purposes, the value of the land should be reduced to its existing use value. The real difficulty (as *Lester's* and *Perkin's Cases* show) is not that the assumed basis of assessment is in any real doubt, but that it is so unreal as almost invariably to cut across the normal ways of approach of a valuer.

Party Walls—Beacon Garage Co. v. Lewis

By J. R. McLey Smith

In a short article on party walls in the April issue of the Journal[1] reference was made to the decision of Fry, J., in *Watson* v. *Gray* (1880), 14 Ch. D. 192, on the four conceptions of party walls. The third conception was of a wall which belonged entirely to one of two owners of adjoining lands but subject to an easement of support belonging to the other owner.

This seems to have been the position in the recent case, *Beacon Garage Co., Ltd.* v. *Lewis* (1951), 157 *Estates Gazette* 441, before Vaisey, J. The report of the case is sketchy, and no mention is made of any case being cited in support of either of the two arguments. The facts briefly were that there were two buildings, A, single storey, and B, three storey, separated by a wall. The owners of A contended that one moiety of the wall belonged to them and that the other moiety belonged to the owners of B and that the wall was a party wall; the owners of A asked for an injunction to restrain the owners of B from interfering with an advertisement erected on the face of their (A's) moiety of the wall. Mr. Justice Vaisey, after referring to *Watson* v. *Gray*, *supra*, came to the conclusion that on the facts of the case the wall belonged to the owners of B and came within the third conception as envisaged by Fry, J., and quoted his words, *i.e.*, " A wall which belongs entirely to one of two adjoining owners but is subject to an easement or right in the other to have it maintained as a dividing wall between the two tenements ", and made a declaration accordingly. Vaisey, J., apparently went on to say that he did not see that this right should be limited in regard to what was to be placed on the wall; he did not see why things should not be put on the wall for, *inter alia*, advertising purposes, provided that such user was not extravagant or excessive and provided that it did no harm to the wall.

This would accord with the decision in *Sheffield Improved Industrial and Provident Society* v. *Jarvis*, [1871] W. N. 208, where Malins, V.-C., held that " apart from the question of the ownership of the wall an easement for support entitled the owner of the dominant tenement to put any amount of weight on the wall which did not endanger its stability ". On the other hand, *Weston* v. *Arnold* (1873), 8 Ch. App. 1084, is authority for the proposition that a wall may be a party wall for the purpose of marking the separation of adjoining properties without being a party wall throughout the whole of its height. If this view is correct then it would be possible to argue that the dividing wall in the *Beacon Garage Case* was not a party wall, in the sense as decided by Vaisey, J., above the height of the first storey and therefore any advertisement erected on the wall above the first storey by the owner of A would be a trespass to the owner of B.

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[1] [1951] J. P. L. 193.

The whole question of the liability with respect to party walls depends into which one of the four categories mentioned by Fry, J., the particular wall fits. If the ownership was vested in persons as tenants in common (prior to 1926) each owner is entitled to the use of and support from the whole wall with a mutual right to prevent its destruction. Similar rights are accorded to owners of a wall divided vertically into halves, each half being subject to a cross easement in favour of the owner of the other half. But where one half of the wall belonged exclusively to each of two adjoining owners, there was no tenancy in common of the wall, but ownership of the two halves in severalty, and either owner could (and can still) pull down his portion of the wall, although sufficient support might not be left for the other part of the wall : *Wiltshire* v. *Sidford* (1827), 8 B. & C. 259 n.; *Matts* v. *Hawkins* (1813), 5 Taunt. 20; *Cubitt* v. *Porter* (1828), 8 B. & C. 257. This inconvenient result was the reason (prior to 1926) for presuming where possible a tenancy in common of the wall. Where an owner of two adjoining houses which require mutual support sells one of them, or where an owner grants a divided half of an outside wall with the intention of making such a wall a party wall there is a presumed grant and reservation of the requisite support and user over the wall : *Richards* v. *Rose* (1853), 9 Exch. 218; *Wheeldon* v. *Burrows* (1879), 12 Ch. D. 31, C. A.; *Jones* v. *Pritchard*, [1908] 1 Ch. 630. Subject to such easements the owner of each half of the wall may deal with each part as he pleases and so long as he uses it without negligence or want of due care he is not responsible for any nuisance or inconvenience : *Jones* v. *Pritchard*, *supra*. Apart from local custom or express contract, neither party is subject to any liability if, by reason of natural decay or other circumstances beyond his control his half of the wall falls down, or otherwise passes into such a condition that the easement thereon becomes impossible or difficult of exercise : *Sack* v. *Jones*, [1925] Ch. 235.

In the *Beacon Garage Case* the party wall, if it was such, was held to be in the entire ownership of one of the two adjoining owners of property, but this ownership was subject to a right of support vested in the other owner. There is no natural right to support, *Southwark and Vauxhall Water Co.* v. *Wandsworth Board of Works*, [1898] 2 Ch. 603; but such a right is in the nature of an easement which can only be acquired by statute, by express grant, by implied grant or by prescription. If there are cross easements of support there is no liability to repair, but cross easements in respect of a party wall imply ownership in severalty of each moiety of the wall. In the *Beacon Garage Case* the ownership of the wall was in one person in its entirety subject to an easement in favour of the adjoining owner, and in these circumstances it is submitted that there is some liability on the servient owner to maintain the wall as a dividing wall, otherwise the easement could not reasonably be enjoyed. *Prima facie* as the wall belonged entirely to one owner, any interference with it would amount to a trespass, but as the wall in this case is also a " servient tenement " there is authority for stating that the owner of the dominant tenement may put any amount of weight on the wall which would not endanger its stability.

Development in Barsetshire

Change of use of dwelling-house to flats, coupled with extension; assessment of development charge and claim against global sum

The following conversation may be assumed to have taken place between S., a surveyor, and D.V., the district valuer, during an informal discussion on development charge :—

D.V. In this case you are partly rebuilding and extending a large Victorian house in a suburban area, at the same time making alterations, some external and some internal, to provide six self-contained flats.

S. Yes. The cube of the present building is 35,500 feet, and when extended it will be 51,000 feet cube. The property is leasehold for a term of 999 years from 1871 at a ground rent of £25 a year.

D.V. The ground rent, of course, does not affect the question of development charge, which depends on the value of the permission to the land, without regard to the incidents affecting the particular interest : except in certain cases where the assessment is for a period limited to, say, the extent of the lease [PRACTICE NOTES, paragraph 123].

S. As the lease in the present case is for over 900 years there is not much in that point.

D.V. And of course, except where a mere change of use is involved without building operations, the development charge must have regard strictly to the planning permission; if that is unlimited and operations are embodied I must assess the charge in perpetuity.

S. I do not want to waste a lot of your time—if you are going to say the charge is Nil I will take my leave.

D.V. I am afraid I can't do that. The house is an absolute white elephant as a single dwelling, but converted into six good flats which should command high rents it becomes quite an attractive investment.

S. But the Third Schedule, by virtue of paragraph 2, allows me to convert to flats, and under the exemption regulations I can extend by 7,500 feet cube.

D.V. You are extending by 15,500 feet; it is that extra 8,000 feet which transforms it into a practicable proposition—

you will scrap the pitched roof and provide a flat one after building on an extra storey, at the same time building out a staircase addition to enable each flat to have its own front door. You are also incorporating the old coachhouse and loft in the flats.

S. The Board say I can do the latter free [PRACTICE NOTES, paragraph 18].

D.V. True, but it all adds up to the development you are carrying out beyond the tolerances and exemptions having an extra value over the same thing restricted strictly to the statutory limits. That is where there is some benefit in the planning permission which I have to value.

S. Wait a minute! You keep speaking of the development we *are* carrying out. Isn't that rather a bold assumption to make? I was reading an interesting article in the J. P. L. the other day where the author brought out some points which I thought were rather novel and not generally appreciated (Theory of Development Charge Reconsidered, [1951] J. P. L. 256). You are not bound to value the land as if effect will be given to the permission.

D.V. Yes, I read the article, but I don't think the author really said that. All he said, I think, was that you are not bound to value the land as if effect is given to the permission where obviously it will be less valuable for that purpose than for some other purpose not requiring permission or tolerated under the Third Schedule. Such cases are rare and from the practical point of view if you tell me you are not going to proceed with the development I will close my file. As you know, the Board decline to determine the amount of development charge unless satisfied that the development will in fact be carried out [PRACTICE NOTES, paragraph 120]. Of course, I agree that you are not to be considered to be forced to proceed [paragraph 61].

S. You speak, by the way, of the extra value of the property because of permission being given for extending beyond the tolerances. This article I was reading points out that the value of the land without the permission is sustained by the fact that permission has in fact been given. I take that to mean that the existing use value would be higher because the purchaser would know that by payment of a development charge he could reap the full benefit of the permission.

D.V. That sounds rather Irish. He would not be so optimistic if he thought that the development charge would amount to the full difference in value arising from the permission. In any case I am bound by my instructions and the PRACTICE NOTES. The Board have defined Refusal Value fairly closely [PRACTICE NOTES XVII, paragraph 51, *et seq.*] and it is quite clear to me that the value of the land "without permission" assumes that "permission" will not be given.

S. You are being misled by the PRACTICE NOTES. After all they are only the opinion of the Board, even if somewhat arbitrarily enforced, and the ultimate interpretation of an Act of Parliament rests with the Courts.

D.V. (*breathing heavily*). If you dispute the basis of my assessment you are quite at liberty to take the matter to the Court.

S. Pray calm yourself—I only wanted to get to the bottom of it all. Besides, you haven't told me what your assessment is in terms of money, except that I gather it's more than "Nil".

D.V. I've taken rather an arbitrary short cut, to which I suppose you will object. The way I have arrived at the charge is this—you could convert to the same number of flats within the tolerances, but they would not be quite so convenient and would not in my opinion command such high rents. With your enlargement I think the extra rent will be on an average £25 a flat, or in all £150 a year. I capitalise that at 16 years' purchase, giving £2,400. The extra cube is 8,000 feet, which I take at 4s. a foot cube, or £1,600, and allowing £250 developer's profit gives a total "on cost" of £1,850. The development charge is, therefore, £550, representing the difference between the £2,400 and the £1,850.

S. (*in triumph*) Look at this! A form C.V.121 which I received from you a few days ago, proposing to determine that there is no development value in my client's interest in this very same property—how do you reconcile that with the figures you have just quoted?

D.V. Quite simply. In assessing the development charge I am valuing the fee simple with possession. For the purpose of the claim against the global sum I have to consider the actual interest—in your client's case a leasehold one subject to a covenant to use only as a single private residence. I assumed that in consideration of waiving that covenant the landlord would exact an increased ground rent to cover the extra value and there would be nothing left for you.

S. I think it was G. K. Chesterton who once wrote a rather acid poem about a Lord Chancellor of the day which ended with the words " Chuck it, Smith ". Some latter day poet might write " Chuck it, D.V."—I feel inclined to do so myself. As a matter of fact I met the landlord's surveyor the other day and he told me that you had sent a similar Form C.V.121 in respect of the landlord's interest. He said he queried it with you and you told him that as his reversion was 900 years off he had no claim.

D.V. There is no need for you to be rude. May I point out that for the purpose of claims against the global sum I have to value the interest as it exists on the appointed day; if there is a covenant against a certain user I cannot assume that the covenant will be waived or I shall be valuing an interest different from that actually held.

S. With great respect, I think the purchaser of the relevant unrestricted interest at the material date would take into account the possibility of the covenant being waived or unenforceable; he would consider the benefit to the tenant of s. 19 of the Landlord and Tenant Act, 1927, or the possibility of getting relief under s. 84 of the Law of Property Act, 1925, and would pay a price according to his estimate of the various probabilities and possibilities. That is just a question of practical valuation, and it was often done before the Act.

D.V. So far as the claim against the global sum is concerned I don't admit your point : s. 62 (2) definitely directs me to assume that all the covenants in the lease are properly performed, so there can be no question of a waiver. As to the development charge, I think my figure is a very fair one.

S. Fortunately there is a right of appeal against the formal determination under Part VI, which no doubt my client will exercise. As for your development charge, I have no doubt he will now limit his scheme to come within the tolerances rather than pay what is considered to be an unreasonable figure for a very small extension.

D.V. Before you go, I should like to point out that if there is anything in your point it would apply likewise to the Restricted Value for Part VI, since that would include flats.

S. True, but according to you it is the little bit extra beyond the restriction of the Third Schedule which brings out all the extra value. Don't forget, too, that for the claim we are restricted to a 10 per cent. extension with a minimum of 1,750 feet cube, because that was the position at the appointed day.

Book Reviews

A Guide to Compulsory Purchase and Compensation. By R. D. Stewart-Brown, Barrister-at-Law. 2nd edition. (Sweet & Maxwell, Ltd. 1951. 10s. 6d. net.)

If the utility of a guide to such a subject as this is assumed, Mr. Stewart-Brown has most of the qualifications necessary for the successful production of one: he has powers of lucid arrangement, a good sense of balance between the essential and the merely relevant, and above all an accurate knowledge of his subject. These he has employed to produce an excellent introduction, not overloaded with technicalities, to the law of compulsory acquisition. In writing it the learned author had in mind the needs of readers other than legal practitioners—*e.g.*, other professional men on the look out for a clear outline of this subject—and such others he has clearly supplied with what they want. But a lawyer writing primarily for lawyers must warn his readers of the same profession that although this book will do very well indeed for the student (and a great many practising lawyers could without shame classify themselves as such so far as this diffuse and difficult branch of the law is concerned), the practitioner is not likely to find it of much help in his practice. But perhaps that is hardly a fair comment on a book whose title proclaims it to have been written *alio intuitu.*

There are a few matters of detail which might well be looked to in another edition. The writing is sometimes very clumsy ("no procedure to be followed is expressly laid down", p. 30). There are passages where additional cross-references would help the reader, *e.g.*, in reminding him when he gets to p. 47 who are the public authorities who may be authorised to acquire property compulsorily under the Acquisition of Land, etc., Act, 1919. The use of the expression "quasi-contract" to describe the situation after service of a notice to treat (pp. 28 and 41), although it had judicial sanction in the past, is not very appropriate nowadays. And the position of a statutory tenant of property which is compulsorily acquired is nowhere discussed. This matter is one of sufficient importance to be included even in a guide, especially as the learned author is not afraid to express his views where the law is uncertain: they would be welcome on this point.

J. A. G.

Progress of Development Plans

(*Continued from p. 394, ante*)

The following is the list of plans submitted to date (July 20, 1951). Any objections should be sent to The Secretary, Ministry of Local Government and Planning, 23, Savile Row, London, W.1, before the closing date indicated.

9. Blackburn County Borough Council.
   Submitted to Minister : June 19, 1951.
   (London Gazette, June 22, 1951.)
   Closing date for objections : Aug. 10, 1951.
10. Kingston upon Hull County Borough Council.
   Submitted to Minister : June 26, 1951.
   (London Gazette, June 29, 1951.)
   Closing date for objections : Aug. 15, 1951.
11. West Sussex County Council (Northern Section: Horsham U.D, Chanctonbury R.D., Horsham R.D., Midhurst R.D., Petworth R.D.).
   Submitted to Minister : June 22, 1951.
   (London Gazette, June 29, 1951.)
   Closing date for objections : Aug. 11, 1951.
12. Oldham County Borough Council.
   Submitted to Minister : June 27, 1951.
   (London Gazette, July 3, 1951.)
   Closing date for objections : Aug. 18, 1951.
13. Montgomeryshire County Council.
   Submitted to Minister : June 30, 1951.
   (London Gazette, July 3, 1951.)
   Closing date for objections : Sept. 10, 1951.
14. Gloucester County Borough Council.
   Submitted to Minister : June 27, 1951.
   (London Gazette, July 3, 1951.)
   Closing date for objections : Aug. 20, 1951.
15. Preston County Borough Council.
   Submitted to Minister : June 29, 1951.
   (London Gazette, July 3, 1951.)
   Closing date for objections : Aug. 18, 1951.

16. Stoke-on-Trent County Borough Council.
Submitted to Minister: June 29, 1951.
(London Gazette, July 3, 1951.)
Closing date for objections: Aug. 18, 1951.

17. South Shields County Borough Council.
Submitted to Minister: June 27, 1951.
(London Gazette, July 6, 1951.)
Closing date for objections: Aug. 14, 1951.

18. Rochdale County Borough Council.
Submitted to Minister: June 20, 1951.
(London Gazette, July 13, 1951.)
Closing date for objections: Aug. 31, 1951.

19. Newcastle-upon-Tyne County Borough Council.
Submitted to Minister: June 30, 1951.
(London Gazette, July 6, 1951.)
Closing date for objections: Aug. 31, 1951.

20. Radnorshire County Council.
Submitted to Minister: June 29, 1951.
(London Gazette, July 6, 1951.)
Closing date for objections: Aug. 18, 1951.

21. Carlisle County Borough Council.
Submitted to Minister: June 29, 1951.
(London Gazette, July 6, 1951.)
Closing date for objections: Aug. 20, 1951.

22. Gateshead County Borough Council.
Submitted to Minister: June 29, 1951.
(London Gazette, July 10, 1951.)
Closing date for objections: Aug. 20, 1951.

23. Sunderland County Borough Council.
Submitted to Minister: June 29, 1951.
(London Gazette, July 6, 1951.)
Closing date for objections: Aug. 24, 1951.

24. Leicestershire County Council.
Submitted to Minister: June 29, 1951.
(London Gazette, June 29, 1951.)
Closing date for objections: Aug. 11, 1951.

25. Croydon County Borough Council.
Submitted to Minister: June 30, 1951.
(London Gazette, July 13, 1951.)
Closing date for objections: Aug. 20, 1951.

26. Berkshire County Council.
Submitted to Minister: July 16, 1951.
(London Gazette, July 17, 1951.)
Closing date for objections: Sept. 1, 1951.

27. Cardiganshire County Council.
Submitted to Minister: July 14, 1951.

The Minister of Local Government and Planning, in a reply to a Parliamentary question which we report on another page (*post*, p. 481), has given certain information as to the submission of development plans by the local planning authorities.

London County Council.

On July 3, 1951, the London County Council accepted a recommendation of the council's Town Planning Committee that the draft Town Map, Programme Map, and Written Statement for the development plan for the administrative county of London should be approved for the purpose of consultation between the county council and the City Corporation and metropolitan borough councils.

It is intended that the plan, which is designed to cover the ensuing twenty years, shall be submitted to the Minister by the end of the year.

Parliamentary Intelligence

Replies to Questions in the House of Commons

Compensation awarded by Lands Tribunal

In a written reply to Mr. Powell, the Attorney-General (Sir Frank Soskice) stated that the average ratio between the amount of compensation awarded by the Lands Tribunal in cases of compulsory acquisition and the amount offered by the acquiring authority was, for the year ended May 31, 1951, 1 : :1.379. The amount in each case necessarily depended upon the particular circumstances. (June 25, 1951. H. C. Debates, Vol. 489, col. *111*.)

Claims for loss of development value

In reply to Mr. Black, the Chancellor of the Exchequer (Mr. Gaitskell) said that up to May 25, 1951, the Central Land Board had determined that about 112,000 claims made under s. 58 of the Act of 1947 had no development value. In respect of all determinations made by the Board so far, there had been 420 notices of appeal to the Lands Tribunal. (June 26, 1951. H.C. Debates, Vol. 489, col. 1184.)

Development Plans

In a written reply to Mr. Walker-Smith the Minister of Local Government and Planning (Mr. Dalton) stated that nine local planning authorities had submitted development plans and fourteen more would do so by July 1.[1] One hundred and thirteen had asked for and been granted an extension of time, twenty of these being for a few weeks only, until the next meeting of the authorities. Ten others who have not yet asked for extensions were expected to do so. (June 26, 1951. H.C. Debates, Vol. 489, col. *121*.)

Dwelling-houses in New Towns

In a written reply to Mr. S. Marshall, the Minister of Local Government and Planning (Mr. Dalton) stated that on June 30, 1951, 251 dwellings had been completed at Crawley, 72 at Stevenage, 448 at Hemel Hempstead, and

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[1] See *ante*, p. 478, for the particulars to date.

3 at Basildon (July 3, 1951. H.C. Debates, Vol. 489, col. *198*).

Single Plot Owners

In a written reply to Mr. Marples, the Chancellor of the Exchequer said that up to May 31, 1951, 12,740 applicants had been accepted as eligible for the single plot concession (July 3, 1951. H.C. Debates, Vol. 489, col. *199*).

Correspondence

To the Managing Editor,
Journal of Planning Law.

Sir,

Use of Dwelling-houses as " Homes "

We have read with interest the article by Mr. Charles Greenwood in the J. P. L. for June of this year, on page 329, and note his remarks regarding the letter from Messrs. Bryant & Griffiths on the subject of the conversion of a building, erected as a dwelling-house and in use on the appointed day as a small boarding house, into two flats.

We agree with his view that residential user for the purposes of the Act is interpreted by the planning authorities as meaning a dwelling-house used as a single private residence.

The question of development charge liability is, of course, another matter, and depends on the facts of each case.

We ourselves have been in touch with a number of local planning authorities regarding the conversion of large private residences into homes for elderly sick people on behalf of a charitable trust. We tried at first to maintain in each case that there was no change of user as the homes would not, in the strict sense, be nursing homes, but simply places where elderly people who were not able to look after themselves would reside with a small staff. In each case the local planning authority informed us that planning consent was necessary and it was obtained, although with considerable difficulty in some cases.

An even more important example is perhaps another house which was bought recently by clients of ours as a home for about twelve elderly ladies of a religious order. Here the elderly residents would be looking after themselves and our clients' solicitors were very firmly of the opinion that there was no change of user, the previous use of the house having been as a private residence.

When we applied to the local planning authority, however, we were informed that planning permission was necessary.

In both the above examples our clients are exempted from payment of development charge by the Development Charge Exemption Regulations, 1950, para. 3 (2), but the necessity for planning consent remains.

Yours faithfully,

Ryde, Sons & Browne,
Chartered Surveyors.

3 Victoria St., S.W.1.

To the Managing Editor,
Journal of Planning Law.

Sir,

Borough of Droitwich—land for private building

My Council consider that although there is land available for private building in the Borough, the price at which it can be bought is, in most instances, a price considerably above the existing use value. They wish to encourage private building and consider that there is a real danger of housing in the Borough becoming out of balance due to the preponderance of Council houses, which create a burden on the rates. With this in view they have already contracted to buy, subject to the approval of the Minister, a piece of land for re-sale to persons holding civil building licences. The consent of the Minister has not yet been received but there appears to be no reason why it should not be forthcoming, as in my opinion this sort of thing was clearly contemplated in ss. 38 and 40 of the Town and Country Planning Act, 1947. I may be wrong and it would be interesting to hear what comments other lawyers might make on this aspect of the scheme.

My Council, however, wish to go further than the purchase of land by private treaty and they have resolved in principle that other land shall be purchased by compulsory powers if necessary, for re-sale to persons holding civil building licences, or possibly to persons who are applicants for these licences, but who have not yet been successful. The question of exactly what further land shall be acquired is now under consideration.

Yours faithfully,

S. G. Foster,
Town Clerk.

Town Hall,
Droitwich.

P.S.—Since writing the above, the Ministry have approved the purchase by private treaty of the land referred to above.—S. G. F.

To the Managing Editor,
Journal of Planning Law.

Sir,

Old Contravening Development

May I express disagreement with Mr. Blanco White?[1]

Had there been no proviso to s. 75 (1), s. 23 would have applied unaltered in all cases, and the four year rule would have been the limiting period for service of all notices. The proviso to s. 75 (1) varies the four year rule except in cases to which the 1946 Act applies, which leaves the four year rule for 1946 Act cases.

The determination under the 1946 Act may be a final determination that the land must be restored to its original use, although I doubt it.

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[1] See p. 399, *ante*.

I think it is no more than a determination that the development was in contravention of planning control and is not to be deemed to comply. There is nothing compulsive about it, and it seems to be no more than a clearing of the way to compulsive action, *i.e.*, the service of an enforcement notice.

The suggestion that the draftsman of s. 75 (2) intended the 1946 Act procedure to replace the normal procedure of appeal against an enforcement notice seems to make far too much of the omission of one step in the s. 23 procedure (rendered redundant by the 1946 Act procedure). The rest of ss. 23 and 24 remain, so that there has been very little replacement.

I am afraid Mr. Blanco White goes astray on the question of development charge. His example of a temporary use will not be challenged because the time for enforcement has not passed. I would suggest the following example: A has a house worth £80 p.a. and uses the ground floor for offices in which way the value of the property is £150 p.a. He does this without permission. Five years later he applies for permission to use the ground floor as a shop, in which way the property will be worth £250 p.a. Should the development charge for the shop be based on the increase in value over that of a house only, or the house with ground floor offices? Personally I cannot see any way in which the Board could take the house only as the basis of refusal value. Of course, if A applies after five years for a permission confirming the office use and receives a back-dated permission under s. 18 (1) the Board may "get him".

With regard to the enforcement of conditions imposed under the 1946 Act, if a development is "deemed to comply" subject to conditions, presumably it must be deemed that any requisite permission under a planning scheme or interim development order was duly granted. It seems to me that where in order to have complied a permission ought to have been obtained, "deemed to comply" must involve deeming permission to have been granted. That would bring into operation s. 76 (1) by which the conditions would be deemed to have been imposed under Part III of the 1947 Act. They could not have been so imposed before July 1, 1948, so that there could have been no breach before that date. The enforcement of conditions will be possible within four years of the breach occurring by virtue of the 1951 amending Act.

Yours faithfully,

Eastbourne. W. A. LEACH, F.R.I.C.S.

[Mr. Blanco White replies:—

Mr. Leach's example, as usual, excellently illustrates the points in issue. I agree that the Board could not take the house only as the basis of refusal value; my point was, that the Board can assess, separately, a charge (which may be penal) for the shift from house to offices "as if" permission for the change had been duly asked for in the first place. The only relevance of the later change to a shop, is that it might draw the Board's attention to the existence of a contravening use.]

Development Charge and the Taxation of Trading Profits

The following is an extract[1] from the report of the Committee on the Taxation of Trading Profits, of which the chairman was J. Millard Tucker, Esq., K.C. The report was presented to Parliament by the Chancellor of the Exchequer in April, 1951, and is published by H.M. Stationery Office (Cmd. 8189. 3s. 6d.).

" *Development Charge*

It has been claimed that the owner of a business who pays a development charge under the Town and Country Planning Act, 1947, for permission to 'develop' land for business purposes ought to be entitled to include the charge in the expenditure by reference to which the depreciation allowances on his business premises are computed.

We are unable to accept this contention. In our view the payment, though incurred for the right to 'develop' (normally the right to put up a building, or to change the use to which an existing building is put), is analogous to a payment made for the land itself; indeed, the principle underlying the Act is that the price paid to the vendor shall be restricted to the value of the land for its existing use and that any additional value which will be created by the development of the land shall accrue not to the vendor (as it would do but for the Act) but to the State. In other words a part of the purchase price which would otherwise have been paid to the vendor is diverted to the State.

Where the owner of the business is already using the land, and pays development charge for permission to make a material change in the use of the land, the payment represents the handing over to the State of the capital appreciation which he would otherwise have enjoyed by reason of the change in the use; if the Act had not required him to hand over the value of the capital appreciation, it would not, even if realised by a sale, have been a profit chargeable to Income Tax. Just as the land itself cannot depreciate through use in the business, so the asset created by the development charge, namely, the right to develop, cannot depreciate. Its value (like the value of the land) may fluctuate; thus a change of population may make it unprofitable to continue to use the land for the purpose of the business—or indeed for any purpose—but that depreciation is a capital loss which ought not to be taken into account in a tax on income any more than the capital gain which may arise because a change of population has increased its value for its existing use.

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[1] This extract forms para. 272 of the report.

We do not therefore recommend that allowances should in general be given in respect of development charges. There is one possible exception to be made to this general rule. Planning permission may sometimes be granted for a limited period only. Very often nothing is payable by way of development charge in such cases; there may, however, be cases where there is a charge. Such charges create an asset which is very clearly of a wasting nature and we recommend that *the owner of a business who pays a development charge for a limited period should be entitled to write off the amount over the period for which the permission is given.*"

Notes of Cases

Pontypridd U. D. C. v. Max Stone, Ltd. (June 28, 1951). Premises built in 1870 as a shop had been used as such until December, 1927. They were then vacant until April, 1941, when they were let to Messrs. Woolworth & Co. for the storage of stock. In December, 1949, the respondent company had taken a lease of the premises and opened them as a retail shop, and in October, 1950, the local authority served an enforcement notice requiring this use to be discontinued.

The magistrates had quashed the notice on the grounds that the use by Messrs. Woolworth & Co. was either that of a retail shop or a temporary use.

The Divisional Court of the K. B. D. (Lord Goddard, C.J., Hilbery and Ormerod, JJ.) upheld the magistrates' decision because they felt they could not interfere with the finding that the use as a store was a temporary use only, and the magistrates had intended to find, as a question of fact, that the normal use was that of a shop. The Court were of the opinion that the first finding of the magistrates, that the use by Messrs. Woolworth & Co. was that of a retail shop, would be difficult to uphold, but that question could be left open.

Appeal dismissed, with costs.

Lands Tribunal Decisions *

Fooks v. Minister of Supply (Reference No. 32/1950, June 27, 1951). This was a claim for compensation payable upon the compulsory acquisition of a farm of 250 acres at Over Wallop, Hampshire. The land had been requisitioned since October, 1939, compensation for disturbance and tenant right having then been paid, and a compensation rental of £150 p.a. paid or tendered since that time. Notice to treat was served on May 24, 1949, and compensation accordingly fell to be assessed under ss. 51 and 54 of the Act of 1947, with regard to the state of the property as at the date of requisition.

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* Reports of these cases will appear in *Planning and Compensation Reports.*

The claimant declined to state a value for the property. The district valuer submitted a detailed valuation totalling £4,000.

The Tribunal (J. P. C. Done, Esq., F.R.I.C.S.) accepted that the district valuer's figures were correctly deduced from comparable transactions except that his figure for the farmhouse and buildings (£300) was thought to be unreasonably low. The Tribunal determined that the investment value (exclusive of sporting rights) was £4,600, and allowing for the additional vacant possession to which the claimant was entitled, and for the sporting rights, and deducting the value of a tithe annuity of £20 10s. 5d. to which the land was subject, the compensation was assessed at £5,000.

In view of the failure of the claimant to deliver a claim or negotiate with the acquiring authority, and his declared intention not to accept the compensation or execute a conveyance, the claimant was ordered to pay the acquiring authority 120 guineas costs, to be reduced to 50 guineas if he delivers an acceptable abstract of title and executes a conveyance.

Ford v. Hartley Wintney R. D. C. (Reference No. 79/1950, June 27, 1951). This reference arose from a claim for £44 for injurious affection, notified to the Lands Tribunal by the claimant on August 9, 1950.

The Tribunal (J. P. C. Done, Esq., F.R.I.C.S.) dismissed the claim with costs since no evidence was offered or arguments submitted by the claimant. Counsel on behalf of the claimant attended the hearing and argued on the question of costs, it being said that the claimant had been prejudiced by the fact that notice of the hearing, originally fixed for March 21, had not been received by him until March 8, although the local authority had been notified on February 20. That hearing had, however, been postponed, first until April 10 and then, at the request of both parties, until May 1; and a notice from the claimant's solicitors to the Tribunal indicating that the claimant did not wish to proceed with the case had not been signed or agreed by both parties, and accordingly was not a valid notice under rule 43 of the Lands Tribunal Rules. The Tribunal therefore held that the authority should not be deprived of their costs, and gave their decision accordingly.

Notes of Planning Decisions*

Use of Dwelling-house as Day School for Girls

The Minister of Local Government and Planning has conditionally allowed an appeal against the refusal of Broadstairs and St. Peter's Urban District Council to permit the use of 7 Waldron Road, Broadstairs, as a day school for girls.

The Minister considers that as the premises have previously been used as a boarding-house the change of use is unlikely to have a damaging effect on amenities. He thinks the building would be suitable for the proposal and agrees with the appellant that it would meet a real need.

In order not to prejudice the planning position, however, he has decided to give a temporary permission only, so that the case can later be reviewed in the light of experience. He therefore permits the use of the premises as a day school for girls until May 31, 1956, subject to the number of girls attending being limited to thirty.

[By courtesy of the Public Relations Officer, Kent County Council.]

Change of Use of Former Dwelling-house and Extension, from Nursing Home to Social Bureau

The following is an extract from the letter of the Minister of Local Government and Planning, dated June 16, 1951, dismissing an appeal against the refusal of the Borough Council of Cambridge, to permit the use of premises at " Stella Maris ", Trumpington Road, Cambridge, as professional and administrative offices for The John Hilton Bureau.

" It was stated for the appellant that the bureau carries on the work of the late Professor John Hilton in dealing with social and domestic problems and that their work is well-known. It is at present most inconveniently housed in four separate buildings, all of which are unsuited for offices. ' Stella Maris ' would accommodate the whole of the staff of 150, 60 of whom are highly trained professional men and women. The character of the neighbourhood was changing, the larger houses were no longer attractive as family dwellings, and many were already in institutional use. 'Stella Maris' itself had been used for some years as a maternity home, but the creation of the National Hospital Service had gone far to put private maternity homes out of business and the present use of the building was likely to terminate soon.

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* The Managing Editor desires to express his thanks to those who have been kind enough to send to this Journal particulars of planning decisions, and hopes that he will continue to receive particulars of planning decisions which involve points of general interest.

For the council the proposal was opposed on the ground that the establishment in this area of an office of the size proposed would adversely affect its residential character, and that the building should be kept for hospital beds in Cambridge.

The Minister is satisfied that the residential character of this area should be maintained. He recognises that some of the larger houses are unlikely to be used again as family dwellings and is of opinion that nursing homes and schools are not inappropriate in such an area. He has considered what should be done with such a building as 'Stella Maris' if the present use should terminate, and thinks that other alternative use such as a residential hostel could be found which would not be open to objection."

[By courtesy of the County Planning Officer, Cambridge County Council.]

Use of Garden Shed as Printer's Workshop

The following is an extract from the letter of the Minister of Local Government and Planning, dated June 26, 1951, following an appeal against the refusal of the Willesden Borough Council to permit the continued use of an existing shed in the garden of No. 13 Crest Road as a printer's workshop.

"The appellant has installed a small printing press in his shed and he is operating this as a hobby, merely accepting a few orders from friends. Evidence was given by his next door neighbour that no noise was caused, and a number of other nearby residents stated that they had no objection to the use.

The Minister has given careful consideration to all the facts before him. He has noted that there is no question of outside labour being employed by the appellant nor will there be any traffic involved.

The work is carried on within the curtilage of the appellant's dwelling-house. In these circumstances it appears to the Minister that the appellant's use of the garden shed must be regarded as ancillary to the main use of the property as a dwelling-house and that in consequence it does not represent a material change of use."

[By courtesy of the Clerk of the Middlesex County Council.]

S. 17 Application in Respect of a Use Already Commenced.

Sausage-making and Refrigeration Store in Residential Shopping Area

The following is an extract from the letter of the Minister of Local Government and Planning dated May 30, 1951, following three appeals against decisions of the Hendon Borough Council refusing consent to :

(a) the continued use of No. 1107 Finchley Road, for the manufacture of food-stuffs ;
(b) the continued use of No. 1109 Finchley Road, for refrigerator storage in connection with a retail butcher's shop at No. 1097 Finchley Road ;
(c) the erection of a brick-built store at the rear of No. 1109 Finchley Road.

" Your clients contended that (a) and (b) above do not constitute development and so do not require permission. S. 17 of the Act gives power to determine whether *proposed* changes in the use of land constitute or involve development. The uses here in question were, however, instituted before the dates of your clients' applications. This issue cannot, therefore, be determined under s. 17, and the Minister's decision on the appeals must in the circumstances relate solely to merits.

The Minister is satisfied that your clients' present uses of both appeal premises prejudice the council's policy, with which he agrees in general, of maintaining this part of Finchley Road as a shopping centre.

Moreover, as regards appeal (a), sausage-making is likely by reason of smells, noise and smoke, to cause annoyance to people living nearby.

As regards appeal (b), there would seem to be little objection to the refrigerator storage use as such, so long as it did not involve—as the present use does—any break in the continuity and appearance of the line of shop windows in this part of Finchley Road.

With regard to appeal (c) the Minister notes that permission for the erection of this storage in the back yard was refused on the ground that ' the use of the shop premises is a contravention of former planning control '. No reason was, however, given why such a store should not be built, and the Minister is aware of no objection to that proposal.

The Minister has accordingly decided to dismiss appeals (a) and (b) above, and to allow appeal (c). He notes that it was intended to use the proposed store in connection with the sausage manufacture (which he has decided shall not be permitted to continue) and your attention is therefore drawn to the use to which the building, if erected, may be put, namely, to storage purposes only."

[By courtesy of the Town Clerk, Hendon Borough Council.]

Conditions on Erection of Motor-coach Garage

The following is an extract from the letter of the Minister of Local Government and Planning, dated March 17, 1951, following an appeal against three of the conditions imposed by the Watford Borough Council in granting permission for the erection of a motor-coach garage at Watford. Permission had been granted subject to the following conditions :

1. The submission and approval of detailed plans.
2. Limited approval expiring on December 31, 1960, and the removal of the building at the end of that period.
3. The proposed building to be used only for the garaging of the appellant's vehicles.
4. The orchard to remain as such and not to be paved or used in connection with the motor-coach business.
5. The height of the building at the eaves not to exceed eleven feet.
6. The building to be kept six feet away from the boundary fence at the rear of Princes Avenue.
7. The premises generally to be tidied up and kept tidy.

"Although the appellant has appealed against conditions 2, 3 and 6 only, the Minister considers that some of the remaining conditions are inappropriate. He feels that condition 5 is unnecessary because of condition 1; that condition 4 would probably involve development, and that condition 7 would be unenforceable. He has therefore decided to deal with the appeal under s. 16 (2) of the Act as if the application had been made to him in the first instance. . . .

While the Minister appreciates the desire of your council that the area should revert to residential use as soon as practicable, he is not satisfied that redevelopment is urgent enough to impose a time limit on the life of the garage, the effect of which would be to impose unnecessary hardship on the appellant. In addition, while he agrees that suitable conditions should be imposed to protect the amenities of the houses nearby, he sees no reason why the garage should not be sited as proposed by the appellant; in his opinion the six foot set back from the boundary fence at the rear of Princes Avenue would not be a practical improvement and would mean the loss of valuable space.

Accordingly, the Minister has decided to grant permission for the erection of a garage for the parking and minor repairs of motor coaches on the land in question subject to the following conditions:—

(a) The design and external appearance of the said garage shall be as may be agreed by the local planning authority or in default of agreement as shall be determined by the Minister.

(b) The premises shall not be used for any other purposes (including any purpose within Class III or Class IV of the Schedule to the Town and Country Planning (Use Classes) Order, 1950).

(c) No power-driven machinery shall be installed except as may be agreed by the local planning authority or in default of agreement as shall be determined by the Minister."

[By courtesy of the County Planning Officer, Hertfordshire County Council.]

Display of Advertisements

The Minister of Local Government and Planning has allowed an appeal against the refusal of Folkestone Borough Council to permit the display of a number of advertisements on a house, used partly as an estate agent's office, at Cheriton Road, Folkestone.

Four of the signs concerned are inside windows of the house, and the Minister says he has no jurisdiction over these. For the rest, the Minister allows the appeal in so far as it applies to signs fixed to the walls of the building. He will not, however, permit the display of a hanging sign on the corner of the house. He considers that this would create an excessive amount of advertisement matter on the building as well as detracting from its appearance.

[By courtesy of the Public Relations Officer, Kent County Council.]

Practical Points

All questions for consideration should be addressed to " The Managing Editor, The Journal of Planning Law, 3 Chancery Lane, London, W.C.2." The questions of subscribers only are answerable in the Journal. All questions should be submitted in duplicate. The Publishers cannot accept any responsibility for the correctness of replies.

320. *Claims for loss of development value—land occupied by temporary bungalows.*

In 1924 an estate was laid out with a number of temporary bungalows and, pursuant to authority contained in a local Act, agreements were entered into with each of the owners providing, *inter alia* :

(a) that the bungalows should only be occupied during the period April 1 to September 30 each year;
(b) that they should be removed on four weeks' notice by the council;
(c) that the permission granted was without prejudice to the requirements and provisions which the council might insert in a town planning scheme then being prepared.

The owners of these sites have put in a claim to the Central Land Board under Part VI of the 1947 Act, and the question arises as to the existing use value of the land at the appointed day. I should appreciate your views as to whether—

(a) In view of the restrictions imposed the land can be regarded as having an existing use value for housing purposes with the benefit of the tolerance provided for in the 1947 Act?
(b) If not, what is the basis of value and to what extent can a claim under Part VI be established? [A. G. H.]

ANSWER

In view of the terms of the licence the use on the appointed day was a temporary use. The restricted value would be the value for the use which might be resumed under s. 12 (5) (*a*). As it must be assumed that no development would be permitted (apart from Third Schedule development) it must be assumed that there would be no renewal of the temporary use.

The unrestricted value would be the value of the land for the use which might be resumed, and for any development likely to have been approved under previous planning control, or for which compensation would have been payable in the event of refusal (see [1950] J. P. L. 876). The probability of the temporary use and buildings being allowed to continue would be a matter to be taken into consideration so far as it would affect the open market value. [W. A. L.]

321. *Development—use of chapel as agricultural store.*

On July 1, 1948, a building was then used as a place of worship. In 1951 a proposal was made to use the building as an agricultural store. It has been suggested that this proposal is a change of use from Class XIII to Class X of the Use Classes Order, 1950. On the other hand, as the building will be used solely as a store connected with agricultural operations carried on by the owner on the farm immediately adjoining the former chapel, the provisions of s. 12 (2) (*e*) of the 1947 Act appear to apply, and therefore there is no obligation to obtain permission for development.

Would you kindly advise which view is correct?

ANSWER

As the chapel will be occupied for agricultural purposes in conjunction with the occupation of agricultural land, I consider that s. 12 (2) (*e*) applies, and no planning permission is required. [R. P. C.]

322. *Planning permission—effect of agreement under s.* 34 *of Act of* 1932.

The local planning authority have refused to permit the erection of three bungalows on a piece of land with a frontage to a secondary road on the ground that " the development would injure an area which it is proposed should remain rural ".

In August, 1940, our client's predecessors in title entered into an agreement with the local authority whereby it was agreed that a part of their land should be reserved for agriculture only, and the other parts for buildings at a density of four houses to an acre. The land on which it is proposed to erect the four bungalows forms part of the land reserved for building as aforesaid.

We are aware that any agreement made under s. 34 of the 1932 Act will remain effective subject to the provisions of any development plan made under the 1947 Act. The point occurs to us is whether " development plan " in this context means a plan actually approved by the Minister; or whether if the agreement in question contravenes tentative zoning in the proposed development plan, the agreement may be overridden. [W. K. & L.]

ANSWER

Too much reliance should not be laid on the agreement, although its existence will show that at one period the site was reserved for building. In the case of *Ransom & Luck, Ltd.* v. *Surbiton Borough Council*, [1949] Ch. 180, it was held that, although a s. 34 agreement under the 1932 Act gave power to a local authority to accept restrictions offered to it by a landowner, it did not empower the authority to undertake in consideration of the landowner's submission to restrictions not to use its planning powers or otherwise to fetter its discretion in respect of powers conferred on it by the Town and Country Planning Acts. Irrespective of this there are considerable powers in Sched. X, para. 10, of the 1947 Act for the Minister to vary and modify restrictions.

S. 25 (3), which is, no doubt, referred to in the last paragraph, only refers to a development plan which has received approval, but the sub-section appears to be limited to agreements under s. 25 of the Act of 1947, and not to those under previous legislation continued by the transitional provisions. [R. P. C.]

323. *Purchase notice—position of owner pending completion.*

A client owns a corner block of property, comprising shops and flats, on a main road in respect of which a purchase notice was confirmed on June 10, 1949. Owing to a wide divergence of opinions as to value the compensation has not yet been agreed. The building inspector of the local authority has reported that the condition of the property constitutes a danger to pedestrians owing to loose slates and brickwork. The Town Clerk has expressed the opinion that until a conveyance is executed my client is liable for any claim for damages which may occur. I contend the local authority are responsible as from the notice to treat, as otherwise there is no apparent reason why my client should not enter and dispose of any salvagable materials generally. [R. E. G.]

ANSWER

I think the Town Clerk is right, although this is a matter in which the writer would be well advised to seek further advice.

The notice to treat does not even create a contract but only a position in some ways analogous to a contract. When there is a contract the vendor is bound to execute, at his own cost, such urgent repairs as are necessary to preserve the property from deterioration, and would be liable for any lawful claims by third parties for injuries arising out of the condition of the property.

It is assumed that the acquiring authority has not entered into possession. [W. A. L.]

324. *Development charge—10 per cent. tolerance already used.*

In 1949/1950 we received a temporary licence for ten years for the erection of eight nissen huts as warehouses in connection with a mill. The cubic capacity of these just came within the 10 per cent. permitted tolerance allowed under the Act and therefore did not attract a development charge. We have now received a licence for extensions to the mill premises of roughly a further 10 per cent. cubic capacity thereof.

We asked the Central Land Board to allow us to use the 10 per cent. tolerance on the new proposed extensions and that we pay a development charge on the nissen huts, as they were erected for a period of ten years only and their cost was about £1,100, the cost of the new extensions being about £6,500.

The District Valuer and the Central Land Board, however, refuse to allow us to use the tolerance on the new extensions, and say we have already used it on the nissen huts. Could you advise us in this matter? [C. G. M.]

ANSWER

I think it is right to say that the tolerance on the original building has been used. If, however, permission to retain the nissen huts or replace them with other temporary or permanent buildings is at any time refused, I would suggest this would constitute a change of circumstance warranting a claim for variation of the development charge under s. 73. [W. A. L.]

325. *Enforcement notice—omnibus body in field.*

Towards the end of 1949, the owner of a small field situated outside a village, placed in the field a caravan, an old double-decker omnibus body and an unsightly wooden structure, without first obtaining planning permission. The County Council as the local planning authority sent a letter to the owner informing him that planning permission was necessary before he could develop the land in question and in due course an application was received for planning permission for the siting of a double-decker omnibus, together with a wooden portico and trailer caravan in the said field, which was described as waste land. The owner intimated that it was his intention to use the 'bus as a summer residence and eventually to establish a camping site in the field. The application was duly considered by the Planning Committee of the Council and permission was refused. An appeal to the Minister of Town and Country Planning was dismissed. Despite several written requests the owner refused to remove any of the structures from the field and on June 12, 1950, an enforcement notice was served on him requiring the removal within twenty-eight days of the double-decker omnibus, such caravans as might be on the site and also requiring him to discontinue the use of the land for camping purposes.

The caravan and wooden portico were removed within the time specified in the notice, but the double-decker omnibus remains on the field to this day. The Council are particularly anxious to have this removed as soon as possible, but are not satisfied that the mere placing of it in the field amounts to a material change of use of the land enabling the Council to proceed by way of prosecution against the owner. It may be pertinent to point out that it has not been used at all.

Your opinion is sought on the following questions :—

(1) Whether the mere siting of the old double-decker omnibus in a field which has not previously accommodated such a vehicle constitutes development?

(2) If so, is it development because it constitutes a material change of use of the field in question?

(3) Whether in the event of the owner removing the double-decker omnibus from the position it now occupies to another part of the field a further enforcement notice will be necessary before action can be taken?

(4) If you are of the opinion that a prosecution would be inappropriate in this case and the Council have to resort to the remedy of entering on the land and restoring it to its original state, what steps should the Council take to safeguard themselves against any possible action such as that of trespass? [G. T. J.]

ANSWER

It is doubtful whether the mere siting of a double-decker omnibus in a large field constitutes a material change of use of the field. But the applicant has said he intends to make it his summer residence, and a " use " does not rest on actual occupation, and a new use may have been established.

Further, if the wheels have been removed and supports placed under the body, this may have amounted to an operation.

It is difficult to understand how the double-decker omnibus, wooden portico, and trailer caravan have all been grouped together in one individual application and all included in one individual enforcement notice. They appear isolated units and as such ought to have been treated separately. But the enforcement notice is valid unless objections are made within the prescribed time of twenty-eight days (see *Perrins* v. *Perrins* (1951), 1 P. & C. R. 457). Presumably, therefore, action can be taken under the enforcement notice to obtain the removal of the omnibus, and unless the notice has specified the precise location of the omnibus no further enforcement notice will be necessary for its removal from any part of the field. Provision is made for an entry upon land on enforcement, and provided that nothing is done which is not relevant to the enforcement no question of trespass can arise. [R. P. C.]

326. *Planning permission for light industrial use—appeal against time limit.*

The owners of property, part of which is being used for a light industrial purpose and the other part as a dwelling-house, obtained interim development permission early in 1948 to use the property for the purpose of " making toys, small glassware and paper novelties, etc.", but the permission was limited to a period of three years. It is understood that the business part of the property has been used for various light industrial purposes since before 1914, and that on each occasion permission has been granted for each particular use, as the property stands within a residential area.

The 1948 permission has now expired and the owners have applied to the local planning authority for permission to use the property for light industrial purposes, but permission has been granted in similar terms to that in 1948. The reason why the owners require an unconditional planning permission for light industrial purposes is that they wish to move into a larger factory and to sell their present factory by public auction. The very limited permission now granted will, of course, severely restrict the market in which the property could be sold and in any event the owners do not wish to sell their factory to a competitor.

An official of the Corporation states unofficially that they would be quite prepared to consider any application made by any prospective purchaser to use the property for any specific light industry, but they could not grant a permission for light industrial purposes generally, as someone might purchase the factory who wished to carry on a light industry of which the Corporation did not approve.

In view of the definition of a light industrial building contained in the Town and Country Planning (Use Classes) Order, 1950, it seems rather difficult to understand what light industrial purpose the Corporation could possibly object to. Permission has been obtained extending the time for lodging an appeal against the present planning permission, pending negotiation with the Corporation.

Assuming we are unsuccessful in our negotiations with the Corporation, we shall be obliged if you will give us your opinion generally on whether you consider there are any grounds of appeal. [W. B. & C.]

Answer

In the appeal I think emphasis should be laid on the iniquity of the time limit rather than on the refusal to permit the premises to be used for light industrial purposes generally, for the following reasons :—

1. The object of planning control is to give individual decisions on individual facts and not general decisions (*i.e.*, for any light industrial purpose) in order to create open market value.

2. Emphasis can be laid on the long use of the premises over a period of years for light industrial purposes, to show that the time limits imposed have just become a habit on the part of the local authority.

3. Once the time limit is taken away there will be uncontrolled power under class III of the Use Classes Order, 1950, to change from one light industry to another without planning permission and this will be appreciated by the purchaser's advisers when the premises are sold. [R. P. C.]

THE JOURNAL of PLANNING LAW

Published by
SWEET & MAXWELL, LIMITED
2 & 3 CHANCERY LANE, W.C.2

On the First of Every Month

Subscription: £1 10s. 0d.

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"Planning Law" Notes

A Welsh office of the Ministry of Local Government and Planning is to be established in Cardiff to administer the planning functions of the Ministry in Wales, and also the housing and local government functions hitherto carried out by the Welsh Board of Health.

The headquarters of the new office will be at Cathays Park, Cardiff.

The Kent County Council have assembled a display of maps, diagrams, and other documents illustrating the development plan proposals for the county, to form a travelling exhibition. This will be on display to the public at Maidstone and ten other towns throughout the county on dates between August 8 and October 31.

Attention has been drawn recently to the question of procedure at the public inquiry where a government department is seeking to acquire land compulsorily.

The land in question was a considerable area of agricultural land in Suffolk, of which Lord Iveagh is a trustee and the principal farming tenant, and which the Forestry Commission sought to acquire. Although the compulsory purchase order was confirmed by the Minister of Agriculture in respect of a reduced area (350 acres) of the land, it was necessary in this case under s. 4 (3) of the Forestry Act, 1945, for Parliament to confirm the order if objections were made and not withdrawn. A Bill sponsored by the Ministry of Agriculture was accordingly introduced in the House of Commons, and came before a Select Committee of the House.

As Lord Iveagh has since pointed out in a letter to *The Times*, at the public inquiry held by the Minister no evidence was offered by the Forestry Commission to justify the acquisition, and the objectors were not permitted to cross-examine the Commission's representative, but the Minister nevertheless decided to confirm the compulsory purchase order. But in the Parliamentary Committee, where the onus was upon the Minister to prove his case for the acquisition, the committee after hearing his evidence unanimously rejected the Bill without even calling upon the petitioners to present their case against it.

Lord Iveagh commented that " nothing causes more resentment in the individual or makes bureaucracy generally more unpopular than the attitude of a government department which refuses to state its case in public ", and, indeed, this criticism of the procedure followed at the Ministerial inquiry in such a case seems to be merited.

This safeguard has now been taken away by the repeal of s. 4 (3) of the Act of 1945, by s. 20 of the Forestry Act, 1951, *post* p. 540, and such compulsory purchase orders, if objected to, are now subject to the special parliamentary procedure prescribed by the Statutory Orders (Special Procedure) Act, 1945 (see *Encyclopædia of Planning, Compulsory Purchase and Compensation*, Volume *Compulsory Purchase*, p. 329).

The Minister of Local Government and Planning has issued Circular No. 52/51 with regard to the exercise by local planning authorities of their power to challenge existing advertisements after the expiry of the period of grace on July 31, 1951. The circular is printed in full on p. 543, *post*.

The surveys carried out throughout the country in connection with the preparation of development plans have no doubt revealed a great deal of information of sociological and general interest.

The Lindsey (Lincolnshire) County Planning Committee is concerned at the serious lack of facilities which has been shown to exist in many parts of rural Lindsey. Less than half the villages have either a village inn or public meeting place. Only a third have an adequate hall, and very few indeed a playing field. Less than a quarter have a doctor's surgery, and only about thirty have maternity and child welfare clinics. Mains water and electricity have reached only about two-thirds of the villages, and few adequate sewerage schemes are yet in existence.

Under the usual compulsory purchase procedure, where the Acquisition of Land (Authorisation Procedure) Act, 1946, applies, if the owner, lessee or occupier of the land objects to the compulsory purchase order the Minister, as the confirming authority, must either allow such person an opportunity to appear and be heard by a person appointed by the Minister, or must cause a public local inquiry to be held. Except in respect of certain special types of land which are subject to "special Parliamentary procedure", the only other right of objection is the right of a "person aggrieved" to apply to the High Court within six weeks of publication of notice of confirmation of the order, on the grounds that the order is *ultra vires* or that there has been non-compliance with some statutory requirement.

A reminder that the 1946 Act procedure does not apply in all cases, and that in other cases there may be the possibility of some other form of objection arises from the case under the Forestry Acts on which we comment above. A case under the 1946 Act where the land has been held to be within one of the classes subject to special Parliamentary procedure, and the compulsory purchase order has been quashed by the High Court because such procedure had not been followed, is noted at p. 550, *post*.

The Central Land Board have now published their report for the year ended March 31, 1951. Much of the matter contained in the report has already been published in this *Journal* under the heading "Central Land Board Practice". We include in this issue (*post*, p. 545) a note of additional information appearing in the report.

The Mineral Workings Act, 1951, which received the Royal Assent on August 1, 1951, contains certain modifications and extensions of the Town and Country Planning Act, 1947, in relation to mineral workings (see *post*, p. 537).

The Dartmoor National Park (Designation) Order has been signed and submitted to the Minister of Local Government and Planning for confirmation. The area comprises approximately 365 square miles, all in Devon. The area designated includes the whole of Dartmoor Forest, the downland country around Roborough, Haytor and Whitchurch and the townships of Buckfastleigh, Moretonhampstead and Widecombe. A copy of the Order together with a map showing the boundaries is available for inspection in the offices of all local authority districts affected by the Order.

The Minister of Local Government and Planning has made an Order dated August 13, 1951, setting up a Joint Board for the Lake District National Park. The Board will take over all responsibilities as local planning authority for the area as soon as it is in a position to do so on a date to be announced. In the meantime applications for planning permission, etc., should continue to be addressed to the local planning authorities concerned.

The Minister of Local Government and Planning has approved an order submitted by the Gloucestershire County Council defining an area of special control of advertisements. Copies of the approved order and of the maps annexed thereto may be seen at the offices of the County Council, Shire Hall, Gloucester, and at the offices of the local authorities whose areas are affected : *London Gazette*, August 7, 1951.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Journal. They should be sent to the Managing Editor, *Journal of Planning Law*, 3 Chancery Lane, London, W.C.2. *Every attempt will be made to return drafts or unsuitable copy but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

Appeals Against Enforcement Notices

The Shoreham Houseboats Case

By R. E. MEGARRY, M.A., LL.B., Barrister-at-Law

On July 23, 1951, the Steyning Magistrates sitting at Shoreham-on-Sea disposed of some 59 appeals against enforcement notices in what will no doubt be known as the *Shoreham Houseboats Case* (see *The Times*, July 24, 1951).[1] The case decided nothing, for all the notices were, by consent, quashed, with 115 guineas costs; yet a number of the points of law which were argued before the case was settled are of importance both to planning authorities and to landowners and their advisers. These points fall under the following heads.

1. The time to be specified in an enforcement notice.

By s. 23 (3) of the Town and Country Planning Act, 1947, " an enforcement notice shall take effect at the expiration of such period (not being less than twenty-eight days after the service thereof) as may be specified therein ". On this provision, two questions arose in the *Shoreham Case*, namely, whether the period specified in the notice must be at least twenty-eight *clear* days, and secondly, whether a failure to specify the requisite period invalidates the notice.

(a) *Whether a period of 28 clear days is required.*

The answer to this seems plainly to be Yes. It is true that time is generally computed by excluding the first day and including the last, but here the Act requires a period " not being less than twenty-eight days ", and the effect of the words " not being less " are important. The matter may be tested by taking a period " not less than one day ". In such a case, notice served on Monday to take effect on Tuesday plainly would not satisfy the requirement that there should be a period of " one day "; " one day " obviously must mean " one clear day ", and so for twenty-eight days or any other period. The authorities are summarised in *Re Railway Sleepers Supply Co.* (1885), 29 Ch. D. 204, where Chitty, J., held that the words " an interval of not less than fourteen days " in the Companies Act, 1862, s. 51, meant an interval of at least fourteen clear days, for the phrase " is equivalent to saying that fourteen days must intervene or elapse between the two dates " (p. 207). In *McQueen* v. *Jackson*, [1903] 2 K. B. 163, a King's Bench Divisional Court held, without citation of authority, that the requirement in the Sale of Food and Drugs Act, 1899, s. 19 (2), that " the summons . . . shall not be made returnable in less time than fourteen days from the day on which it is served " meant that fourteen clear days must elapse between the date of service and the date of return. Again, in *R.* v. *Turner*, [1910] 1 K. B. 346, one of the many points decided by the Court of Criminal Appeal was that the requirement in the Prevention of Crime Act, 1908, s. 10 (4) (*b*), that " not less than seven days " notice should be given could be satisfied only by seven clear days' notice. On the authorities as they stand, it seems plain that the shortest period which may be specified in an enforcement notice is twenty-eight clear days, so that if the notice is served on January 1, the earliest date which can safely be named in the notice as the date upon which the notice is to take effect is January 30, the period of January 2 to January 29 inclusive constituting the twenty-eight clear days required by the Act. This construction of the Act was accepted by the local planning authority in the *Shoreham Case*, with the result that none of the notices complied with the Act, for in each case the enforcement notice gave twenty-seven clear days' notice, or in a few cases, less.

---

[1] It is only fair to give warning that I was engaged in the case and may have failed in this article to have discounted sufficiently my original view of the case through appellants' spectacles. But Mr. L. G. Scarman, who appeared for the local planning authority, has been kind enough to read most of the article in draft, and his view that the points mentioned in it need ventilation has been sufficient encouragement to overcome any hesitation which I might otherwise have felt. Mr. W. Scrivens appeared for some of the appellants, and originally advanced some of the arguments discussed in this article.

(b) *Whether specifying less than twenty-eight clear days invalidates the notice.*

In the *Shoreham Case*, the local planning authority contended that even though an enforcement notice provided that it was to take effect after the lapse of only twenty-seven clear days, that did not invalidate it. It was said that s. 23 (2) of the Town and Country Planning Act, 1947, set out all that was essential to the validity of the enforcement notice (requiring that the notice should specify the offending development or the conditions not complied with), and that s. 23 (3) (which contains the requirement as to twenty-eight days) merely related to the operation of the notice. If too short a period was specified in the notice, it was said, the notice simply took effect at the expiration of twenty-eight clear days required by the Act. The appellants, on the other hand, contended that an essential part of an enforcement notice is a statement of when it was to take effect, and that if that statement contravened the express requirements of the Act, the notice was bad in one of its essentials, and so bad *in toto*. Alternatively, if the notice was nevertheless a good notice, it was one which could never take effect, for s. 23 (3) expressly provides that the notice is to take effect at the expiration of the period " specified therein ", and no lawful period had been specified in the notice. It seems probable that one or other of the appellants' contentions was correct.

(c) *Specifying separately the compliance period and the effectiveness period.*

A few words may be added here upon a point as to time limits which did not arise in the *Shoreham Case*, and that is whether an enforcement notice must state separately the time within which the requisite steps must be taken, and the date upon which the notice takes effect. S. 23 (2) provides that the enforcement notice may require such steps as may be specified in the notice to be taken " within such period as may be so specified ", for (*inter alia*) restoring the land to its condition before the development took place. This provision appears to be quite distinct from the provision in s. 23 (3) that the notice shall take effect " at the expiration of such period . . . as may be specified therein ", both in substance and in wording, especially as the former is a period *within* which some steps must be taken, and the latter a period at the *expiration* of which the notice takes effect. When s. 24 (1) states that " if within the period specified in an enforcement notice . . . any steps required by the notice to be taken . . . have not been taken ", this clearly refers back to the first of these provisions, and not to the second. In the *Shoreham Case*, the notices required steps to be taken by December 31, 1951, but stated that the notices took effect at some date in June or July, 1951. Such a diversity of dates seems plainly not only permissible but desirable and perhaps essential;

whatever defects the Shoreham notices may have had on other counts, in this respect they were unexceptionable. In other words, to be immune from attack on this score, it seems that an enforcement notice ought to state two separate periods, one the period at the end of which the notice becomes effective, and the other a period within which the requisite steps must be taken.

But is a notice bad if it does not do this? For example, if an enforcement notice served on June 1, 1951, requires the removal of buildings by, say, July 1, 1951, but contains nothing explicit to say when the notice is to take effect, can it be said that by implication the notice takes effect on July 1, 1951? The argument, of course, is that if an act is required to be done by a particular date, the requirement must be effective at that date at the latest. There is much force in this, but also some difficulty. The argument may be tested by considering its consequences. On the example taken, no effective enforcement notice existed until the last moment of June 30, 1951; at the first moment of July 1, 1951, the notice sprang into effectiveness and *eo instanti* the period within which the buildings had to be removed expired. In other words, such a construction of the Act produces enforcement notices which, as soon as they become effective, require instantaneous compliance and afford the landowner no " period " as required by s. 23 (2) within which to comply with the notice.

A further consideration is that the period of not less than twenty-eight days which must elapse before an enforcement notice becomes effective is plainly intended to afford the landowner an opportunity of appealing or seeking planning permission, and if at the last moment of that period he decides to take neither such step, it may well be said that it can hardly have been intended that he should be in default because he did not begin to remove the building while the notice was still ineffective. If the notice requires a building to be removed within thirty days, and it will take at least twenty-four days to remove it, must the landowner in effect reach within six days after the service of the notice his decision whether to comply with the notice or whether to appeal or seek planning permission? For all practical purposes, such a notice would be having at least some effect prior to the expiration of the requisite period of at least twenty-eight days.

This point may be summarised thus:—

(a) The Act plainly contemplates and perhaps requires that an enforcement notice should state separately—

(i) the period at the expiration of which the notice takes effect (" the effectiveness period "), and

(ii) the period within which the steps must be taken (" the compliance period ").

(b) It is at least desirable that the compliance period should leave a reasonable time after the expiration of the effectiveness period in which the requisite steps may be taken.

(c) An enforcement notice which merely specifies the compliance period may perhaps thereby specify the effectiveness period by implication. However, such a notice may be open to attack on the ground—

(i) that when a statute makes a notice effective at the expiration of a period to be " specified " in the notice, such a period is insufficiently " specified " if it has to be deduced from a period specified for a different purpose, namely, as a period within which certain steps have to be taken;

(ii) that the notice does not satisfy the statute because it fails to give the landowner any period in which to comply with it, since the notice is ineffective until the compliance period has expired;

(iii) that s. 23 contemplates the landowner having a reasonable period after the notice has taken effect in which to take the steps which the notice enjoins.

The subject is not one for dogmatism, and the foregoing contentions are by no means irrefutable, but it is fair to say that the prudent local planning authority will do well to specify the two periods separately, and to specify a compliance period sufficiently lengthy to allow the landowner a reasonable time for compliance after the date on which the notice takes effect.

2. Whether Petty Sessions may quash an invalid notice.

On the footing that the enforcement notice in the *Shoreham Case* was invalid, could Petty Sessions quash it? The argument of the local planning authority was that once the Court was satisfied that the notice was invalid, the Court lost any power to quash it and could only dismiss the appeal. An argument that invalidity conferred upon the notice immunity from being quashed by the justices is indeed strange at first sight; but an examination of the Town and Country Planning Act, 1947, s. 23 (4), shows how forceful that argument is. Excluding any questions of breaches of conditions, or enforcement notices which require the landowner to do more than is necessary to restore the *status quo ante*, the relevant parts of s. 23 (4) provide that on an appeal—

> " the court—
>
> (*a*) if satisfied that permission was granted under this Part of this Act for the development to which the notice relates, or that no such permission was required in respect thereof, . . . shall quash the notice to which the appeal relates; . . .
>
> (*c*) in any other case shall dismiss the appeal:"

The authority's argument was thus that the Act directs the Court to dismiss the appeal in every case except two, namely,

(i) where planning permission for the development was granted, or

(ii) where no planning permission for the development was required.

No mention is made in s. 23 (4) (a) of defective notices; *ergo*, s. 23 (4) (c) must apply, and so the Court " shall dismiss the appeal ", as in fact was decided at quarter sessions in *Stamp* v. *Bognor Regis U. D. C.* (1949), 1 P. & C. R. 220, where it was alleged that the notice was out of time. A further contention in the *Shoreham Case* was that having invoked the jurisdiction of the Court by appealing against the enforcement notice, it hardly lay in the mouth of the appellant to contend that the notice was no notice; by impugning the notice the appellant was kicking away the whole foundation of his appeal.

The appellants sought to counter this argument by invoking *Perrins* v. *Perrins* (1951), 1 P. & C. R. 457; [1951] 1 All E. R. 1075. In that case, an enforcement notice had been served on a landowner requiring him to discontinue a use of land alleged to have been commenced since July 1, 1948. He did not appeal against the notice but continued the use, whereupon he was prosecuted under the Town and Country Planning Act, 1947, s. 24 (3), for non-compliance with the notice. A King's Bench Divisional Court held that on that prosecution it was not open to the landowner to allege that in fact no development had taken place since July 1, 1948, because the user had started before that date. The enforcement notice had not been challenged within the time allowed and thereafter its validity could not be challenged. " It is not for the justices, when a person is prosecuted for the offence of contravening an enforcement notice which has not been appealed, to go into the question whether the notice was a good or a bad one: it has become effective, and, once it is effective, it is the duty of the person who has had the opportunity of appealing against it, and has not appealed, to abide by it " (*per* Lord Goddard, C.J., at 1 P. & C. R. 461). " As s. 23 contains specific machinery for obtaining . . . the cancellation . . . of the enforcement notice, it is not open to the person who is subsequently prosecuted for failing to carry out something required by the notice to question its validity when he has let pass the opportunity of challenging it given by s. 23. Having done that, he has no defence to a prosecution under s. 24 (3) " (*per* Streatfeild, J., at p. 462).

This decision, when coupled with the *Shoreham Case*, raises difficult questions. If a landowner wishes to challenge an enforcement notice on one of the grounds upon which the justices are expressly given power by the Town and Country Planning Act, 1947, s. 23 (4) to quash the notice, *Perrins* v. *Perrins* plainly produces fair and reasonable results. But what if, as in the *Shoreham Case*, the landowner wishes to challenge the notice on some other ground, such as the invalidity of the notice? If the argument of the local planning authority was right, and if the words used in *Perrins* v. *Perrins* are to be taken in their full width, the justices have no power to quash the notice, yet the notice cannot be questioned on a subsequent prosecution. Indeed, that situation might well have arisen in *Perrins* v. *Perrins* itself. If the landowner had appealed against the enforcement notice, his argument would have been, " I have not carried out any development since the appointed day; I have merely continued the use which began before that day ". Now a plea of " No Development " is neither a plea that permission was granted, nor a plea that although development took place no permission was required (*e.g.*, as in the cases set out in the Town and Country Planning Act, 1947, s. 12 (5)); yet those are the only relevant cases mentioned in s. 23 (4) (*a*) in which Petty Sessions is given express power to quash the notice. It is arguable that the words " no such permission was required in respect thereof " (*i.e.*, in respect of " the development to which the notice relates ") extend not only to " development " for which no permission is required, but also to acts which require no permission because they do not fall within the definition of development at all: see, *e.g.*, [1949] J. P. L. 366, and *Perrins* v. *Perrins*, where the point seems to have passed without argument. But such a contention ill accords with the words of the statute, and as it is not merely an isolated instance of matters which fall outside the sub-section, there appears to be no compelling case for stretching the language chosen by the draftsman.

But the matter is not devoid of assistance from the wording of the Act. S. 24 deals with the effect of non-compliance with an enforcement notice. In brief, by sub-s. (1), if the notice requires any steps to be taken (other than the discontinuance of a use of land), and those steps are not taken in due time, the local planning authority may enter the land, take those steps, and recover from the landowner as a simple contract debt the expenses reasonably incurred in so doing. This would apply, for example, to a building erected without planning permission. On the other hand, if the notice requires a use to be discontinued, sub-s. (3) renders the landowner liable to prosecution and fine. What is remarkable is that in the concluding words of sub-s. (1) there is a provision which is absent from sub-s. (3) to the effect that if the landowner was entitled to appeal against the enforcement notice but "failed to make such an appeal, he shall not be entitled in proceedings under this subsection to dispute the validity of the action taken by the local planning authority upon any ground which could have been raised by such an appeal". Read literally, this provision applies:—

(i) only if no appeal was made, and not if there was an appeal but the particular point was not taken;

(ii) only to civil proceedings for debt under sub-s. (1), and not to a prosecution under sub-s. (3).

(iii) only to grounds which could have been raised on the appeal.

In *Perrins* v. *Perrins* the enforcement notice required a use to be discontinued, so that sub-s. (3) would apply on non-compliance with the notice, and the concluding words of sub-s. (1) would *prima facie* be irrelevant. However, Lord Goddard, C.J., referred to those words, and said of the person upon whom the notice was served, "If he is not entitled to take objection to the notice when he is summoned [*sic*] for the cost of doing the work, it would be very odd if he could still take objection when he is prosecuted under sub-s. (3) for failing to observe the terms of the notice" ([1951] 1 All E. R. at p. 1077). The result of this dictum and the actual decision in *Perrins* v. *Perrins* appears to be that the spirit, if not the letter, of the concluding words of sub-s. (1) extends to a prosecution under sub-s. (3).

With some hesitation, the apparent result may be summarised as follows :

(a) Failure to appeal against an enforcement notice debars the person concerned from taking in civil proceedings under s. 24 (1) or a prosecution under s. 24 (3) any point which he could have raised on that appeal.

(b) The matters which can be raised on such an appeal include those set out in s. 23 (4), and perhaps also (*Perrins* v. *Perrins*) the question whether any development has been carried out.

(c) Whether other matters outside the scope of s. 23 (4) can be raised on an appeal is doubtful. The point does not appear to have been discussed in *Perrins* v. *Perrins*, but even if the case is to be read as sanctioning a general extension of the grounds upon which an enforcement notice may be quashed, it is difficult to extend it to a case where the complaint is that the notice is bad, for the appellant would in one breath be alleging that jurisdiction is conferred by the existence of a notice, and yet that that notice is a nullity.

(d) If Petty Sessions comes to the conclusion that an enforcement notice is bad, s. 23 (4) appears to direct the Court to dismiss the appeal. In so doing, the Court may well intimate its conclusion that the notice is bad, and so in practice make it at least improbable that any further proceedings will be taken on it; but the appellant may indeed experience difficulty in obtaining any order for the costs to which he is morally entitled for what in substance is victory, but in form is defeat : see Summary Jurisdiction Act, 1848, s. 18.

(e) It is plainly desirable that there should be some cheap and speedy means of testing the validity of an enforcement notice before it has become effective. There seems no reason why the jurisdiction of Petty Sessions should not be extended so as to apply to any attack on the validity of enforcement notices, whether that attack is formal or substantial.

This last point raises the question of alternative procedure.

If no appeal to the justices lies on the ground that the notice is bad, and if the landowner does not want to risk leaving this point until he is sued or prosecuted for non-compliance with the notice (and in view of *Perrins* v. *Perrins* this is understandable), it falls to be considered what steps he can take. It may well be that proceedings will lie in the High Court for a declaration that the notice is bad: consider *Ruislip-Northwood Urban District Council* v. *Lee* (1931), 145 L. T. 208. This, of course, is neither as speedy nor as cheap as proceedings before the justices. Further, whereas the Act provides that if an appeal to the justices is made, the enforcement notice " shall be of no effect pending the final determination or withdrawal of the appeal " (s. 23 (3) (*b*)), there is no such provision for cases where proceedings for a declaration are commenced. It is unlikely that this omission will cause much hardship in practice, but it is anomalous. Finally the landowner is in an unenviable position if he wishes both to challenge the validity of the notice and set up one of the grounds of objection upon which s. 23 (4) expressly empowers the justices to quash the notice, for strictly it may be necessary to take two sets of proceedings. There is indeed need for the amendment of ss. 23 and 24 so as to simplify rights of appeal; but until this is done, probably the best course for the landowner to adopt is to appeal to the justices even if the most he can hope for is that the appeal will be dismissed on the ground that the notice is bad. In the *Shoreham Case*, the magistrates intimated that had the parties not agreed that the notices should be quashed, it would have been held that the notices served were not proper notices.

3. Appeal coupled with application for planning permission.

If an enforcement notice is served, the Town and Country Planning Act, 1947, s. 23 (3), provides that—

> " (*a*) if within the period aforesaid " (*i.e.*, " such period (not being less than twenty-eight days after the service thereof) as may be specified therein ") an application is made for planning permission, " the notice shall be of no effect pending the final determination of that application . . . ";
>
> " (*b*) if within the period aforesaid an appeal is made to the court . . . the notice shall be of no effect pending the final determination or withdrawal of the appeal ".

These two provisions, which are connected by no " and " or " or ", give rise to some difficulty if the landowner wants to say (as is often the case) " I think the notice is bad, but if I am wrong, I want planning permission ". Under each head, the landowner has to act " within the period aforesaid ", so that there is no provision for taking one step first and then if that fails, taking the other. What the appellants did in the *Shoreham Case* was to take both steps within the period allowed, lodging not only appeals to Petty Sessions, but also planning applications expressed to be without prejudice to the appeals. This apparently reasonable course led to the argument (which in the event was never fully developed) that so soon as the planning application was lodged, the enforcement notice became " of no effect ", and so there was no effective enforcement notice which could serve as the foundation of an appeal.

However logical this argument may appear at first sight, there is little to commend it in substance, and it appears to be fallacious. There is nothing in s. 23 to require that the notice shall be effective before an appeal lies. Thus if an enforcement notice provides that it will take effect six months after service, it would hardly be suggested that the justices have no jurisdiction to hear the appeal until the six months has elapsed. Appeal lies against the notice *simpliciter*; the fact that the notice has not taken effect seems immaterial for this purpose, whether the failure to take effect is due to the period specified in the notice or the suspensory operation of s. 23 (3) (*a*). Indeed, as the mere lodging of an appeal itself operates to render the notice " of no effect " pending the final determination of the appeal, it follows that in no case can the notice appealed against be effective at the time of the appeal, so that Parliament must be taken to have contemplated appeals being heard against enforcement notices which were not effective.

4. Specifying the development.

In the *Shoreham Case*, a number of attacks were directed at the enforcement notices on the ground that they did not " specify the development " in a way which satisfied the requirements of s. 23 (2), or that they were otherwise insufficiently explicit. These attacks may be grouped as follows :

(a) *Failure to state whether the acts complained of amounted to " unauthorised development " or a " contravention of previous planning control ".*

The notices in question in effect simply recited that since 1928 the land in question had been developed contrary to the

Town and Country Planning Acts, 1932, 1943 and 1947. This left it uncertain whether what was complained of was development—

(i) between 1928 and March 31, 1933, or

(ii) between April 1, 1933 and July 1, 1948, or

(iii) on or after July 1, 1948.

The significance of these dates is as follows. In the last case, the definition of " development " is contained in s. 12 (2) of the Town and Country Planning Act, 1947, the power to serve an enforcement notice is given by s. 23 (1) " if it appears to the local planning authority that any development of land has been carried out after the appointed day without the grant of permission . . . ", and the grounds upon which an enforcement notice may be quashed are set out in s. 23 (4). In the second case, the definition of " development " is that contained in the Town and Country Planning Act, 1932, s. 53, the power to serve an enforcement notice is given by s. 75 (1) of the Town and Country Planning Act, 1947, in cases where works were carried out or any use was begun " in contravention of previous planning control " (defined in s. 75 (9)), and the grounds upon which an enforcement notice may be quashed are those set out in s. 23 (4) as modified by s. 75 (5). It is true that there is an undeniable similarity between these two sets of provisions, but there are also many significant differences. As for the first case, it appears that no development carried out prior to April 1, 1933, in an area subject to interim development control can be the subject of enforcement proceedings. " Contravention of previous planning control " is defined as extending to activities carried out or begun " otherwise than in accordance with permission granted in that behalf by or under the interim development order "; and by s. 119 (1), " interim development order " means " an order made under subsection (1) of section ten of the Act of 1932 ". It is true that under s. 52 (2) of the Act of 1932, an existing resolution to prepare or adopt a scheme took effect as if it were a resolution under the Act of 1932, but it was not until the Act of 1932 came into force on April 1, 1933, that that resolution could take effect in this way; and not until that date could the interim development control which sprang from the resolution be subject to the provisions for permission given by or under an interim development order " made under " s. 10 (1) of the Act of 1932. The matter has indeed been decided in this sense by the

Minister: see *Bulletin of Selected Appeal Decisions* 9 (7), and see generally [1951] J. P. L. 402.

Accordingly, in the *Shoreham Case* the appellants contended that the enforcement notice left it entirely unresolved whether it related to activities which were unauthorised development under the Act of 1947, or contraventions of previous planning control, or neither. A notice so lacking in explicitness, it was said, must be bad; and there is much force in this contention. The course of safety for local planning authorities appears to have been to make it explicit whether the notice was served under s. 23 or under s. 75, putting it in the alternative, if necessary, or making it cumulative, if the facts warranted it; and any allegation of a contravention prior to April 1, 1933, should have been given special consideration. Where the allegation was merely of a single change of use, but of uncertain date, the alternative rather than the cumulative form should have been used, for *ex hypothesi* if the use was changed prior to July 1, 1948, it was not changed subsequently.

(b) *Failure to define change of use.*

A further attack was made on the enforcement notice in that it merely stated that development had occurred in using the land for mooring boats, without any allegation that the land had previously been used for different purposes. If the land had previously been used for mooring boats, then use for this purpose was not development, and so, it was said, there was no specific allegation of facts constituting development. This does not seem to be a very weighty objection, but in drafting enforcement notices it would be as well to make explicit what the former use was, or at least what it was not, *e.g.*, by alleging that the land was previously used "otherwise than for the mooring of boats or any similar use".

(c) *Failure to state that the change of use was "material".*

As is well known, the phrase used in the definition of "development" in the Town and Country Planning Act, 1947, s. 12 (2) is "any material change in the use of any buildings or other land". Accordingly, it is unwise to allege merely a "change of use" instead of a "material change of use". However, it seems most unlikely that an enforcement notice which alleges that there has been a change of use which constitutes development contrary to the Town and Country

Planning Act, 1947, will be held to be bad merely because it omits the word " material ".

(d) *Failure sufficiently to specify the land to which each notice related.*

Another objection was taken on the ground that the notices specified with insufficient exactitude the land which they affected. It was not enough, some of the objectors contended, for the notice to define the land merely by reference to the name of the houseboat occupying it for the time being. The local planning authority, on the other hand, contended that it would be ridiculous in such a case to require a plan to be attached to the enforcement notice.

Whatever force there might have been in the appellants' contention had the boats in fact been mobile, from time to time moving from mooring to mooring, it is hard to attach much weight to it where, as in the *Shoreham Case*, each of the boats remained continuously on the same site, connected to the bank in many cases by a permanent gangway, and indulging in little more than a gentle vertical motion at high tide. No two reasonable human beings could very well fail to identify the same parcel of land from the description in each enforcement notice, and that should suffice. No doubt it is desirable to attempt to identify the *locus in quo* in some way other than solely by reference to the offending use; " O.S. 179 " coupled with a sheet reference is obviously preferable to " the field which you are using for unauthorised camping " as a description of the land concerned; yet ultimately the test seems to be whether the description given is susceptible of ambiguity or uncertainty when read fairly.

5. Lack of authority to serve the notice.

Lastly, the notices were attacked on the ground that the local planning authority had not considered each notice separately but had given a general authority to the clerk to serve enforcement notices on the owners and occupiers of all boats occupying any part of a specified area. It was urged that this was an improper and unauthorised delegation of an authority which lay in the local planning authority alone, and on this point the local planning authority joined issue.

No doubt it would be improper for the local planning authority to make a general delegation of authority to the clerk to serve enforcement notices, *e.g.*, in any cases in which he thinks fit, or upon any contravention appearing to him to have taken place. The Town and Country Planning Act, 1947, s. 23 (1) provides that " if it appears to the local planning authority that any development of land has been carried out after the appointed day without the grant of permission required in that behalf under this Part of this Act " then the authority may " if they consider it expedient so to do having regard to the provisions of the development plan and to any other material considerations, serve on the owner and occupier of the land a notice under this section ". A commonsense reading of this provision suggests that the local planning authority must indeed have in mind particular infringements on particular areas of land, but that having decided that enforcement action should be taken, the authority can direct the clerk to serve enforcement notices on all offending owners and occupiers within that area, without considering the notices *seriatim*. If a dozen contraventions stand on an acre of land, the resolution to serve enforcement notices should be valid whether the land is owned and occupied by one person or twenty, for planning is primarily concerned with land and the development thereof.

On the other hand, such a construction leaves out of account cases of individual hardships; a notice which will merely inconvenience X may be a disaster to Y, as where X uses the boat only for holiday purposes, whereas Y has no other home. In such a case, Y may well contend that the hardship to him is one of the " other material considerations " mentioned in s. 23 (1). Further, two contraventions with identical planning objections may have come into being under very different circumstances, as where one commenced in the teeth of warnings from the authority and the other was by error encouraged by the authority to some degree. Accordingly, the prudent planning authority will authorise each notice separately, and see that this is recorded in the minutes, even if the notices or cases are taken in groups and it is merely stated that there is no difference in the material considerations in each case or group.

6. Conclusion.

Perhaps some final reflections on the subject may be permitted. Both planning permissions and enforcement notices are documents of great importance, requiring skilled draftsmanship if the expenses and troubles of litigation are to be avoided. The Courts have gone far to rescue planning permissions from defects of draftsmanship (*Crisp from the Fens, Ltd.* v. *Rutland*

County Council (1950), 1 P. & C. R. 48, C. A., is a striking example), but may be less ready to do so in the case of enforcement notices upon which penal proceedings may be founded. Much labour and anxiety might be saved by the publication of carefully drafted model forms to meet the circumstances usually encountered in practice. But until this is done, and in any case where the model forms are not clearly applicable, the drafting of enforcement notices should be regarded as calling for nothing less than the most skilled draftsmanship available to the local planning authority.

On the landowner's side, a careful scrutiny of every enforcement notice for possible defects seems desirable; and although the quashing of one enforcement notice does not usually preclude the local planning authority from serving another such notice in respect of the same development, so that victory may be shortlived, this is not the invariable rule. In the *Shoreham Case*, nearly half the appellants had admittedly commenced their use of the land prior to July 1, 1948, so that the allegation against them was that of contravention of previous planning control. No enforcement notice in respect of such contravention could be served after July 1, 1951 (see Town and Country Planning Act, 1947, s. 75 (1), proviso), so that the result of the case was that these appellants became immune from attack in respect of any such contraventions. Where the development was carried out after July 1, 1948, the time limit is four years from the development being carried out (Town and Country Planning Act, 1947, s. 23 (1); as to breach of conditions, see Town and Country Planning (Amendment) Act, 1951, s. 2 (1)), so that not until July 1, 1952, will it be possible for cases to arise in which the quashing of an eleventh-hour enforcement notice will ensure safety for the landowner. But even where the local planning authority is able to serve a new notice, there may well be cases where the course of the proceedings in which the enforcement notice is quashed will cause that authority to lose its enthusiasm, and induce it to refrain from serving a new notice.

Lastly, it may with justice be observed that this article is far too long, although in mitigation it may be pleaded that ss. 23 and 24 are much too difficult. The draftsman of the Act has achieved much, but it must not be thought disrespectful to him if a plea is made for the reconsideration and amendment of the enforcement notice provisions in the light of the difficulties which are emerging in practice.

Advertisements and Prices

By H. G. Ellinger

Mr. Stirling in his article on "Advertisements and Town Planning",[1] states that in carrying out their duties under the Control of Advertisement Regulations "there appear to be three interests for the local authority to consider: (a) the person or body that wishes to advertise; (b) the business which undertakes the manufacture and display of the advertisement: and (c) the public".

The interests of the public must not however be identified exclusively with those of civic design, aesthetic quality and amenity. The public is as deeply interested in the effect of planning decisions on prices and full employment as on amenity.

The problem has been dealt with from the point of view of the interests of civic design, aesthetic quality and amenity. It is the purpose of this article to deal with the other interests, against which the interests of amenity need to be balanced.

Advertising is an element in the cost of distribution, and those manufacturers and traders who use outdoor advertising do so because they believe that it is the cheapest and most economical method of selling the output of their particular business. In view of their unique experience of their own problems it would be a bold man indeed who would question their judgment on this.

Every addition to the cost of outdoor advertising imposed in the interests of amenity, and every addition to costs arising from an unwise use of the powers of control (as, for instance, results from such a restriction of choice of site that enables landlords to demand an extortionate rent), is an addition to costs of distribution which must ultimately be borne by the consumer. Similarly, everything that prevents the provision of an efficient outdoor advertising service involves alternative means of distribution, the extra cost of which must be paid by the public.

Indeed, it is true of outdoor advertising as of most other forms of development that improved amenity can be had—at a price; but it has to be paid for directly or indirectly by the consuming public, even though, as in the case of outdoor advertising, to trace through and identify how great the price is and where it is being borne is exceedingly difficult.

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[1] [1951] J. P. L. 382.

The extra cost is none the less there, and it is the hard task of the planning authority to hold a proper balance. Particularly at this time, unnecessary additions to the cost of distribution seem to be undesirable from the national point of view. Under modern conditions the economies attainable by mass production have to be matched by a means of distribution that will distribute the output of the manufacture smoothly and continuously. The economies of mass production are generally wholly lost if there are erratic changes in the volume of production. Indeed, we appear now to be witnessing the whole vast production of the Persian oilfields, and the refinery at Abadan, grinding to a standstill because the distribution of the final output has broken down.

It is for this reason that the distinction which some writers on town planning have sought to make, between the necessity for advertising on traders' own premises and general commercial advertising, seems to be false.

Few manufacturers faced with the responsibility of maintaining their works in steady continuous production can afford to risk subjecting the continuity of their sales to the whims of a multitude of individual retailers. Retailers in their buying only reflect the public taste and demand, and left to itself that is liable to be fickle and erratic. Therefore, if a manufacturer is to maintain steady uninterrupted production he must himself create a steady continuous demand from the public itself which will give him the steady continuous sales he needs. This requires a service of general advertising stations available for them to use according to their own carefully made plans.

Upon this continuity of selling depends the continuity of production which is an essential foundation of full employment.

Rights of Rebuilding under the Third Schedule

By J. F. GARNER, LL.M., Town Clerk of Andover

As is well known, the Third Schedule to the Town and Country Planning Act, 1947, para. 1, authorises the rebuilding, as often as occasion may require, without any liability to payment of development charge (but express planning permission must be obtained in respect thereof subject to class XI of the General Development Order), of any building which was in existence on July 1, 1948, and of any building which was in existence before that day but has been destroyed or demolished (as a consequence of war damage or otherwise) since January 7, 1937. Moreover, the new building may be larger than the old, to the extent of 10 per cent. (or, in the case of a dwelling-house, 1,750 cu. ft., whichever is the greater). It also appears that this rebuilding need not necessarily be sited in the exact position of the old building, provided it is within the curtilage thereof (see C.L.B. Practice Notes, First Series, para. 15; " the expression ' rebuilding ' in the Third Schedule means what the term ordinarily implies and bears no artificial statutory meaning "). Must the rebuilding be to the same, or substantially the same, design as before?

The Central Land Board are generally liberal in their interpretation of this provision, and provided the " curtilage " principle is observed, and the 10 per cent. tolerance is not exceeded, they do not normally concern themselves with any deviations from the original design of the building; moreover, more often than not, the new design is an improvement on its predecessor. Provided the tolerance is not exceeded, however, should the new design be substantially the same as the old? Obviously, the departure may not be so great as to involve a change in the use of the premises as would amount to development, for such a change would attract development charge and a need for planning permission of itself. Apart from such considerations, however, it is submitted that the new building need in law bear no architectural similarity to the old. There is no direct authority in support of this view, but some assistance may be gathered from the decisions on the construction of the word " rebuilding ", as used in the Settled Land Acts (see the Act of 1925, Third Schedule, Part I (xxv)). Whether or not particular structural work amounted to a rebuilding of the principal mansion house was said, in *Re Kensington S. E.* (1905), 21 T. L. R. 351, to be a question of fact in each case, and in *Re Walker's S. E.*, [1894] 1 Ch. 189, the alteration, reconstruction and enlargement of a house, where part of the house was unaltered and the walls of another were utilised, was held to be a " rebuilding ", and so was a case involving the addition of new wings to both the east and the west ends of the old buildings (*Re Windham's S. E.*, [1912] 2 Ch. 75).

A further point has been raised by a correspondent recently: does this exemption from development charge " run with the land " ? The question was actually expressed in the form of a case where A, the original owner of a war-damage site, Blackacre, sells off part of the site, but retains a portion, on which he eventually intends to rebuild the house that was destroyed. The portion sold off to B remains, however, part of the original curtilage, and therefore B, equally with A, could make use of the concession, and rebuild on the portion of Blackacre purchased by him. A can, no doubt, if the matter is thought of at the time the transaction takes place, provide for this by taking a personal covenant from B to the effect that he will not exercise his rights under the Third Schedule; but can A enforce such a covenant against C, a subsequent purchaser from B?

If the covenant is worded so that B undertakes not to exercise his rights under the Third Schedule, it is doubtful whether this covenant could be considered in equity sufficiently to " touch and concern " the land, or sufficiently to benefit the land retained, for it to be enforceable under the rule in *Tulk* v. *Moxhay* (1848), 2 Ph. 774. A straight covenant preventing building on the portion sold to B would, of course, be enforceable against subsequent purchasers in accordance with ordinary principles, but this would depress the value of the land sold and would not be what the parties required.

Apart from covenants, however, it seems that A and B (or C, as the case may be), would be equally entitled to exercise the Third Schedule rights in respect of their particular portions of Blackacre. In the absence of agreement between them, presumably the first party to commence building would be entitled to the exemption, at the expense of the other, as the provision in the Third Schedule clearly would not cover the " rebuilding " of two buildings, unless the two buildings together did not exceed the original cubic capacity (plus the 10 per cent. tolerance: see C.L.B. Practice Notes, First Series, para. 20), and the change of use to more than one building was covered by some other exemption (*e.g.*, possibly, para. 2 of the Third Schedule). Grave difficulties would obviously occur if A and B commenced " rebuilding " at approximately the same time; is the material date the laying out of the first footings, or the actual completion of the building?

At the present time it is probably not likely that the problem will often arise in the case of war-damage sites, as it is unlikely that the appropriate Government Department will be prepared to grant more than one building licence under Defence Regulation 56A in respect of what was originally one site, but this would not necessarily apply where the original building was destroyed or demolished otherwise than by war damage, as the issue of a civil building licence is normally only affected by questions of site in the war damage cases.

To sum up, therefore, we would recommend to the owner of a site entitled to the benefit of the Third Schedule as herein discussed, that if he desires to sell off a portion thereof, he should clearly state in the contract and the conveyance whether or not the Third Schedule rights are to be transferred; and the party who is not to exercise the benefit thereof might be asked to enter into a covenant against building. The party entitled to the rights after that transaction should exercise those rights by commencing the rebuilding as quickly as possible; otherwise he may discover he has lost the benefit of the Third Schedule by default.

Development Charge on Various Types of Property

By W. A. LEACH, F.R.I.C.S.

(*Continued from* p. 464)

Offices (Para. 88).

The meaning of office is doubtful. It usually implies a place where the clerical aspects of business are conducted, but possibly does not exclude other purposes, *e.g.*, drawing office, photo-tracing office, and in fact perhaps almost any workplace not being primarily a shop, showroom, factory, workroom, store or dwelling.

As to para. 7 of Sched. III, see " Shops ", *ante*. District Valuers are often suggesting in relation to Part VI claims that where there is a block of offices with caretaker's living quarters, the office use may be extended by 10 per cent. into the living quarters. This, however, is only strictly true so far as the claimant is an occupier and the offices occupied and the living quarters are contiguous so that together they comprise one part of a building and hence together comprise a building by virtue of the definition of building in s. 119 (1).

As noted in para. 88 parts of premises used as offices incidental to the main use may be taken over for the main use, or the incidental use may be transferred to or extended into the parts applied to the main use so long as the incidental use remains incidental; Use Classes Order, 1950,[1] art. 3 (3). The part of a factory or shop used as an office could not be separately let off as an office without permission and liability to determination of a development charge.

So far as premises are in one occupation the materiality of a change of use depends upon whether the change materially alters the character of the premises. The basis of judgment is the premises occupied. To change one room out of twenty in one occupation from use as an office to light industry might not be a material change of the use of the whole premises: so to change the use of one room separately occupied in a building of 100 rooms would be a material change of use of that room, but some planning authorities rule it is not a material change of use looking at the building as a whole. On that basis the use of the whole building may be changed by degrees over a period of time.

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[1] ST 1950, No. 1131; [1950] J. P. L. 603.

Building Estates (Paras. 94–96).

The explanation of the Board's attitude to the assessment of development charge in respect of a building estate really starts at para. 108 of Practice Notes where they say, "a planning permission is . . . given for a particular operation or change of use, and the development charge must be assessed upon the assumption that that permission will be fully operated on the area of land chosen by the applicant".

The Board indicate, however, that they will accept an application for the determination of the charge for part only of the land or buildings covered by the planning permission, and the validity of this willingness should, perhaps, first be examined.

A planning permission is given for a change of use or operation affecting a certain area of land. That is the matter examined by the planning authority and for which their permission is given. It may, therefore, reasonably be contended that if the applicant adopts the benefit of the permission he must adopt the whole benefit. If the permission is to lay out a series of roads he must lay out the whole approved system : if it is to erect a number of buildings, or a building of a number of storeys, he must erect all the buildings or all the storeys as approved : if it is to change the use of a certain area of land or in buildings he must change the use of the whole of that area. There could be little planning if an applicant for permission for a system of roads could lay out those most readily formed and omit the remainder; if an applicant for a pair of semi-detached houses could erect one and leave an unsightly gable wall; or if an applicant for a four storey building with a lofty first floor lining up with adjacent development could omit the expensive first floor, bringing the second and third floors down one storey (which would not be the alteration of a building since no building exists, whilst no work is done which is not within the approval). If the Lord Chamberlain licenses the words in a stage play, "he was a mass of bloody wounds; he was a fool to rush into the fray", it would not be in accordance with the approval to omit "mass of" and "wounds; he was a". The first thing for the applicant to do is to consider the maximum unit of development he wishes to be bound to, and on an extensive development such as a large building estate it would be advisable to apply for the whole in sections, so that the full development is covered as well as reasonable units for development in sequence as opportunity offers. It might also be to the advantage of the planning authority in some cases to insist on approval by sections.

The task of the Central Land Board under s. 70 (2) is to determine the development charge by reference to the benefit of the permission. As the Board say in para. 108, it must be assumed that the permission will be fully operated, and it is not free from doubt that they can lawfully split up the permission, even at the request of the developer. It is still less clear that they can, as hinted in para. 93, themselves decide to split up the permission to units of "reasonable size". It will also often be against the interest of the developer if they should do so, for the development of each section may gain in value from what has gone before, and the developer will always pay on the dead ripe value of the next section created by the development of the previous sections. It may be questioned whether they have the powers which they purport to modify in C.L.B./38 ([1951] J. P. L. 46). If a reasonable time for an approved operation would be ten years there is nothing in s. 70 (1) (*b*) to enable the Board to break down the permission into smaller operations and nothing in the proviso to s. 72 (1) to enable them to modify the charge after four years.

The developer chooses his area when he applies for planning permission and in giving permission the planning authority acknowledges that area to be a practicable and suitable one for the development. It is not for the Board then to decide what area is likely to be developed as an immediate certainty or, usurping the powers of the planning authority, to determine what area the authority ought to agree as one unit. They must value the permission on the assumption that it will be fully operated, making due allowance for the time that may elapse before it is fully operated.

If the applicant asks for the charge to be determined for a smaller area than that comprised in the permission and the Board agree, they may be acting against the interests of the planning authorities, for they will be making it easier for the applicant to make a partial development and then go away and leave the residue undone if he can find a more profitable outlet for his capital elsewhere.

The result of determining the charge for the whole permission may be that there would be traffic in building land with development charge paid, but a little healthy speculation in building land would be far less harmful than the present market in which vendors are apathetic. A little less priggish missionary zeal in favour of "existing use value" would be a good thing: there are only three markets, a free market, a dead market, and a black market, and the last two are not much good to a country.

Limited Period Permissions (Paras. 122–126).

Limited period permissions are of a similar nature to leaseholds. They confer only temporary rights in respect of land so that any sum paid therefor must be recouped during the term thereof.

The valuation of such a permission must be distinguished from that of the monopoly value of licensed premises which is also for a limited period. In the former case the period is limited because it is not intended to be permanent; in the latter case there is almost always the assumption that the licence will be renewed indefinitely, and without that assumption the cost of the buildings would often be beyond justification and uneconomic. Any risk of non-renewal is normally covered by the percentages used in valuing the trade. In the valuation of a really temporary licence the position is similar to that under a limited period permission and allowance should be made for recouping the capital outlay out of taxed income (cf. Millard Tucker Report on the Taxation of Trading Profits (Cmd. 8189), paras. 253–256) ([1951] J. P. L. 485).

The benefit of a planning permission may be an increase of, say, £100 per annum in the value of land for a period of say, fifteen years, but the development charge is a capital payment in respect of which no depreciation allowances are made for purposes of income tax assessments. Therefore the writing off of a development charge for a limited period permission has to be met out of taxed income and the value of the benefit must have regard to that, just as regard is had thereto in valuing a leasehold interest. In this connection para. 272 of the Millard Tucker report, *supra*, seems to err, as a tax concession for depreciation of the consent would help nobody (other than the Central Land Board to charge higher development charges).

Assuming the permission to be for a change of use with no capital expenditure necessary apart from the development charge, the short calculation would be £100 per annum for fifteen years at (say) 6 per cent. and 1½ per cent. with allowance for tax at (say) 9s. in the £ = £574. The applicant should be given the benefit of a developer's profit, say 20 per cent., leaving a development charge of, say, £450.

The remunerative percentage (6 per cent.) will of course be varied according to the nature of the use and the premises, and bearing in mind that what is involved is a short term investment. The sinking fund percentage (1½ per cent.) assumes small sums of money can be set aside yearly to accumulate at 3½ per cent. gross or 1½ per cent. net after deducting tax and allowing for a time-lag in investing, investment costs, and a fee for the trouble involved. The tax rate will vary according to one's guess at what it is likely to average over the term.

Where works are to be carried out the cost thereof must be brought into account. If the works will not require planning permission the questions will be what will they cost, what value will they have after the permission for the use expires, and what will essential reinstatement cost? If the works do require planning permission the same three questions will arise, but possibly more strongly as the permission may *require* the removal of the works and reinstatement of the land at the expiration thereof. The calculation, however, is just the same in either case.

Assume, for example, permission is given for fifteen years to use a house as offices. Rental value as a house, £300 per annum, as offices £800 per annum, cost of alterations £2,000, permanent value of alterations nil, cost of essential reinstatement £200.

A short cut would be to take the increased rental of £500 per annum for fifteen years at say 5½ per cent, 1½ per cent. and tax at 9s., *i.e.*, £500 × 6 Y.P. = £3,000.

This is not quite accurate as one might value the existing rental value of £300 per annum at 5 per cent. or 7 per cent. or anything other than 5½ per cent., and the security of that part of the income is affected by the change of use as well as the additional rent of £500 per annum.

The adjustment would often be relatively negligible, but in the present example, if one would value the house rent at say 6½ per cent. the difference could be allowed for approximately as follows :—

If the £300 per annum for the existing use would be valued at the remunerative rate of 6½ per cent. take the factor for the term, fifteen years at that rate	= 9.40 Y.P.
Deduct the factor for fifteen years at the remunerative rate of the rent for the new use, 5½ per cent.	=10.04 Y.P.
Difference	0.64 Y.P.

Since the new factor is the higher, add £300 × .64	= £192 [2]
Giving a total increase of value of £3,000 + £192	= £3,192

The formal valuations are always to be made of a freehold interest and would be as follows:—

Consent value.			£
Refusal value in perpetuity as below			4,620
Additional value of first fifteen years			3,192
		£	£7,812
Deduct cost of works		2,000	
Loss and reinstatement ..	£2,200		
P.V. fifteen years at 1½ per cent. ..	.8	1,700 [3]	
Loss of rent and int. during works ..		200	
Profit and risk		500 [4]	4,460
		Consent value	£3,352

Refusal Value.	
£300 per annum in perpetuity at 6½ per cent. (15.4 Y.P.)	£4,620
Development Charge. Nil.	

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[2] More correctly the net interest rates (6½ per cent. and ½ per cent. less tax) and net rent (£300 less tax) should be taken, the result being less than half of this figure. Unless there is a substantial difference in interest rates the whole adjustment may be ignored for a short term calculation.

[3] This is not allowing for the cost twice over. The money has to be spent: the £2,000 would be deducted even for permanent improvement, but after 15 years the outlay is valueless.

[4] The capital invested in the land and at risk on a change of use is usually less than on an operation, but the person making the change will expect to get something out of it and a reasonable incentive must be allowed.

If at the end of fifteen years the permission were renewed for a further fifteen years the valuation would be:—

	£
Consent Value.	
Refusal value plus extra value as before ..	7,812
Cost of reinstatement £200 × .8	160
	7,652
Refusal Value	4,620
	£3,032

Development charge, say, £3,000.

If the permission were in perpetuity the consent value would be £800 × 18.18 Y.P. = £14,514 less cost of works, loss of rent and interest and profit on development £2,700 = £11,814. The refusal value at 15.4 Y.P. of £300 would be £4,620 and the development charge £7,194.

The limited period permissions would result in an immediate charge of nil plus £3,000 on each renewal at fifteen year intervals (subject to values remaining unchanged). The total present value at 5½ per cent. of £3,000 receivable at the end of fifteen years, thirty years, forty-five years, etc., is about £2,400, so that a series of limited period permissions would be a considerable source of loss to the Central Land Board.

Limited period charge at developer's option.

It is clear that when the development charge is determined for a limited period at the request of the developer under s. 76 (2) of the Act he cannot expect to inflict all this loss on the Board.

By s. 72 (3), however, each payment must be based on a separate calculation and not as an instalment of an overall calculation. Therefore, if the developer in the example above had a *permanent* permission (eliminating loss of outlay on works and reinstatement) but wished to pay for a period of five years only and then after that for another five years the calculations would be (noting that except where tax on sinking fund is allowed for, an income receivable for a limited term should be valued according to the net income after deducting tax capitalised at a net rate of interest equal to the nominal remunerative rate less tax):—

First five years.	
Consent value.	£
Refusal value in perpetuity (as below) ..	4,620
Additional value for five years £500 per annum gross = £275 per annum net for five years, at 5½ per cent. gross = 3 per cent. (4.58 Y.P.) ..	1,260
	5,880
Deduct cost of works, loss of rent, profit ..	2,700
Consent value	£3,180
Refusal value.	
£300 per annum in perpetuity at 6½ per cent. (15.4 Y.P.)	4,620
Development Charge, Nil.	
Second five years.	
Consent value (valuation of income as above)	5,880
Refusal value	4,620
Development Charge	1,260

A method of working commonly adopted but giving excessive answers is as follows:—

First five years.	
Consent Value.	£
Rental of £800 per annum for five years at 5½ per cent. (4.27 Y.P.)	3,416
Deduct cost of works, loss of rent, profit ..	2,700
Consent value	£716
Refusal Value.	
Rental £300 per annum for five years at 6½ per cent. (4.16 Y.P.)	£1,248
Development Charge, Nil.	
Second five years.	
Consent Value.	
Rental £800 per annum for five years at 5½ per cent. (4.27 Y.P.)	£3,416
Refusal Value.	
Rental £300 per annum for five years at 6½ per cent. (4.16 Y.P.)	£1,248
Development Charge	£2,168

> The developer will get an increased income of £500 per annum gross or £275 per annum net for five years, making £1,375 additional net income spread over five years for which this method suggests a payment of £2,168 capital should be made.

It will be found that if the charge had been calculated for ten years, the answer by the first method would have been nil.

Charge for period less than period of permission.

If the permission is for fifteen years as in the original example, but the charge is to be calculated for five years, the computation becomes more complicated since two terms of years are involved.

	£
First five years.	
Consent value.	
Refusal value in perpetuity as below	4,620
Additional value—£500 per annum for five years at 5½ per cent., 1½ per cent., and tax at 9s. (2.45 Y.P.)	1,225
	5,845
Deductions as for fifteen years' term	4,460
Consent value	£1,385
Refusal value.	
£300 per annum in perpetuity at 6½ per cent. (15.4 Y.P.)	4,620
Development Charge, Nil.	
Second five years.	
Consent value.	
Refusal value	4,620
Additional value	1,225
	£5,845
Refusal value.	
As previously	£4,620
Development Charge, say	£1,225
Third five years.	
As second five years	£1,225
Total development charge £2,450 as against nil for fifteen years in one calculation.	

The moral is, before asking for the charge to be limited to a particular term (unless the term selected coincides with the duration of a lessee's interest) calculations should be made to see how the cost will be affected.

If the development is speculative, it may be that the shorter periods of calculation would be advisable and it may be maintainable in such a case that the amortisation of the cost of works and date for reinstatement should be taken as at a date earlier than the expiration of the permission. The question is always, how would a purchaser look at the proposition.

Progress of Development Plans

(*Continued from p.* 480, *ante*)

The following is a continuation of the list of plans submitted to date (August 16, 1951). Any objections should be sent to The Secretary, Ministry of Local Government and Planning, Whitehall, London, S.W.1, before the closing date indicated.

27. Cardiganshire County Council.
Submitted to Minister: July 13, 1951.
(London Gazette, July 20, 1951.)
Closing date for objections: September 5, 1951.

28. West Riding of Yorkshire County Council.
Submitted to Minister: July 25, 1951.
(London Gazette, July 31, 1951.)
Closing date for objections: September 24, 1951.

29. Lincoln County Borough Council.
Submitted to Minister: July 26, 1951.
(London Gazette, August 3, 1951.)
Closing date for objections: September 15, 1951.

30. Durham County Council.
Submitted to Minister: August 1, 1951.
(London Gazette, August 3, 1951.)
Closing date for objections: September 22, 1951.

31. Worcester County Borough Council.
Submitted to Minister: July 30, 1951.
(London Gazette, August 10, 1951.)
Closing date for objections: September 10, 1951.

32. Lincolnshire, Parts of Kesteven.
Submitted to Minister : July 31, 1951.
(London Gazette, August 14, 1951.)
Closing date for objections : November 16, 1951.

Scotland

For the benefit of those who have property in Scotland the following list shows the progress of development plans in Scotland to August 14, 1951. Objections should be addressed to the Secretary of State for Scotland and sent to the Department of Health for Scotland, St. Andrews House, Edinburgh 1, before the closing date indicated.

The following shows the position to date (August 14, 1951) :—

S. 1. Clydebank Town Council (Central Area Part Plan).
Submitted to *Secretary of State* : November 28, 1950.
(Edinburgh Gazette, December 1, 1950.)
Local Inquiry : April 2, 1951.

S. 2. Inverness County Council.
Submitted to Secretary of State : June 29, 1951.
(Edinburgh Gazette, July 10, 1951.)
Closing date for objections : September 15, 1951.

S. 3. Paisley Town Council.
Submitted to Secretary of State : June 30, 1951.
(Edinburgh Gazette, July 6, 1951.)
Closing date for objections : August 18, 1951.

Statutes

Mineral Workings Act, 1951

(14 & 15 Geo. 6, c. 60. Royal Assent, August 1, 1951)

This Act provides for a fund to be established (s. 2) for the purpose of restoring land to agricultural use after open-cast iron ore working has taken place thereon. Persons working ironstone after July 1, 1951, within " the ironstone district ", which comprises the counties of Leicester, Lincoln (Parts of Kesteven), Lincoln (Parts of Lindsey), Northampton, Oxford, Rutland, Warwick, and the Soke of Peterborough, will be required to pay to the fund a contribution which normally will be 1⅛d. per ton of ironstone extracted (s. 3).

Where a payment under s. 58 of the Act of 1947 in respect of loss of development value is payable to a landowner wholly or partly in respect of the prospect of open-cast ironstone working, a sum to be determined by a formula set out in Sched. II of the Act will be deducted therefrom and paid to the Minister instead of to the landowner (s. 5).

The Exchequer will contribute to the fund ¾d. per ton of ironstone for which a contribution is paid under s. 3 by a person working the ironstone (s. 8).

S. 81 of the Act of 1947 is extended to enable regulations to be made by the Minister to provide that in respect of minerals prescribed by him, development charge shall be set off against s. 58 payments (s. 29 (1)), and that s. 58 payments in respect of such minerals shall be equal to the development value attributable to the prospects of developing them (s. 29 (2)).

Liability to pay contributions under the Act in respect of ironstone workings is not to be taken into account in assessing development charge (s. 14).

Local authorities are given powers to restore worked ironstone land if owned by themselves, or by agreement if owned by other persons (s. 16); and may purchase by agreement or compulsorily any land required for such works of restoration or for providing permanent access to any such land (s. 17).

The Minister of Agriculture is given certain powers of compulsory acquisition for agricultural purposes of any worked ironstone land within the ironstone district (s. 23).

The Act also contains certain provisions for the modification of payments under existing mining leases (ss. 28, 30, 31) and for highways to be temporarily stopped up or diverted on account of mineral workings (s. 32). S. 49 (6) and s. 81 (3) of the Act of 1947 are repealed.

Forestry Act, 1951

(14 & 15 Geo. 6, c. 61. Royal Assent, August 1, 1951)

This Act will come into force on October 1, 1951, except the compulsory purchase provisions (s. 20) which operate from September 1, 1951 (s. 28 (2)). Apart from amending the compulsory purchase procedure under the Forestry Act, 1945, the purposes of this Act are to provide for the maintenance of reserves of growing trees and to regulate the felling of trees.

The following are the provisions of ss. 13 and 20 of the

Act, which relate to tree preservation orders and compulsory purchase procedure, respectively.

Provisions as to tree preservation orders.

13.—(1) Notwithstanding anything in a tree preservation order, a licence granted or directions given by the Commissioners under this Act after the date on which the order comes into force shall be sufficient authority for the felling of any trees to which the order relates; and (except as provided by this section) no application shall be entertained under any such order for consent thereunder in respect of any felling for which such a licence is required under this Act.

(2) Where the Commissioners propose to grant such a licence in respect of any felling of trees for which consent is required under a tree preservation order, the Commissioners shall give notice in writing of the proposal to the authority by whom the order was made; and if within the prescribed period after the receipt of the notice the authority object to the proposal and the objection is not withdrawn, the Commissioners shall not deal with the application, but shall refer it to the Minister of Local Government and Planning.

(3) Where an application for a licence is referred to the Minister of Local Government and Planning under subsection (2) of this section—

(a) the provisions of the tree preservation order, and any provisions of the Town and Country Planning Act, 1947, relating to that order, shall apply as if the application were an application made under the order for consent for the felling of the trees and referred to the said Minister in pursuance of provisions of the order applying section fifteen of that Act, and if the order contains no such provisions as aforesaid it shall have effect for the purposes of this paragraph as if the said section fifteen were incorporated therein subject to such modifications as the said Minister may direct; and

(b) if consent for the felling is given by the said Minister in pursuance of the application, no licence under this Act shall be required for the felling of any trees in accordance with the consent.

(4) Notwithstanding anything in this section, the Commissioners may, where application is made to them for a licence in respect of any such felling as aforesaid, refer the application to the authority by whom the tree preservation order was made; and where an application is so referred—

(a) so long as the tree preservation order remains in force, no licence under this Act shall be required for the felling of any trees to which the application relates, and no direction shall be given thereunder requiring the felling of such trees;

(b) the provisions of the order and any provisions of the Town and Country Planning Act, 1947, relating to the order shall apply as if the application were an application made to the said authority under the order for consent for the felling of the trees.

(5) Where an application for a licence is referred by the Commissioners under subsection (2) or subsection (4) of this section, then, without prejudice to the provisions of subsection (4) of section five of this Act in a case where a notice has been given under that subsection, no account shall be taken, in calculating any compensation payable under the said section five in consequence of any previous refusal of a licence in respect of the trees, of deterioration occurring after the date of the reference.

(6) Where the Commissioners propose to give directions under this Act requiring the felling of any trees to which a tree preservation order applies, the Commissioners shall give notice in writing of the proposal to the authority by whom the order was made; and if within the prescribed period after the receipt of the notice the authority object to the proposal and the objection is not withdrawn, the Commissioners shall not give the directions except with the consent of the Minister of Local Government and Planning, who shall, before deciding whether to grant or refuse to grant such consent, consult with the said authority.

(7) In determining for the purposes of section eight of this Act whether compliance with directions requiring a tree to be felled would involve any person in a net loss, regard shall be had to any compensation received by that person under a tree preservation order in respect of a refusal of consent for the felling of the tree.

Amendment of compulsory purchase procedure.

20.—(1) The proviso to subsection (3) of section four of the Forestry Act, 1945 (which provides that a compulsory purchase order under that section shall be provisional only if objected to) shall cease to have effect.

(2) Subject to the provisions of this section, where objection to a compulsory purchase order under the said section four is

duly made in accordance with Part II of the First Schedule to the Forestry Act, 1945, by any such person as is mentioned in paragraph 2 of that Part and is not withdrawn before the order is made, the order shall be subject to special parliamentary procedure and the Statutory Orders (Special Procedure) Act, 1945, shall have effect accordingly.

(3) If in the case of any such objection as aforesaid it appears to the appropriate Minister that the objection relates exclusively to matters which can be dealt with by the tribunal by whom the compensation for the compulsory purchase would be assessed, the appropriate Minister may disregard the objection for the purposes of Part II of the said First Schedule, and may (whether he disregards it for the purposes aforesaid or not) direct that it shall be disregarded for the purposes of subsection (2) of this section.

(4) Where a compulsory purchase order under the said section four is subject to special parliamentary procedure, the notices to be published and served by the appropriate Minister under paragraph 1 of Part III of the said First Schedule shall contain a statement that the order is to be laid before Parliament under the Statutory Orders (Special Procedure) Act, 1945.

(5) Paragraphs 2 and 3 of Part III of the First Schedule to the Forestry Act, 1945 (which relate to the validity and date of operation of compulsory purchase orders under the said section four) shall not apply to any such order which is confirmed by Act of Parliament under section six of the Statutory Orders (Special Procedure) Act, 1945, but except as aforesaid shall apply to any such order to which the last-mentioned Act applies as if in paragraph 2 for the reference to the publication of the notice of the order there were substituted a reference to the date on which the order becomes operative under the Statutory Orders (Special Procedure) Act, 1945, and as if in paragraph 3 the words from " and shall become operative " to the end were omitted.

(6) Part III of the First Schedule to the Forestry Act, 1945, shall have effect subject to the following amendments:—

(a) in paragraph 1 for the words " a newspaper " there shall be substituted the words " one or more newspapers ";

(b) in paragraph 2 for the words " the publication " there shall be substituted the words " the first publication ";

(c) in paragraph 3 for the word " published " there shall be substituted the words " first published "; and

(d) paragraph 4 shall cease to have effect.

Parliamentary Intelligence

Replies to Questions in the House of Commons.

Agricultural Land

In a written reply to Mr. Digby, the Parliamentary Secretary to the Ministry of Local Government and Planning (Mr. Lindgren) said the Minister was not aware that owners of agricultural land, for which no planning scheme has been approved, are being asked to earmark parts of farms for future building of houses and schools, the land to be acquired at unspecified future dates. (July 17, 1951. H. C. Debates, Vol. 490, col. *98*.)

Development Charges

In a written reply to Mr. Gibson, Mr. Lindgren said that up to the end of June, 1951, £6,781,000 had been paid as development charge and a further £4,042,000 had been set off against claims on the £300 millions. The number of claims on the fund is 945,000, but the total amount of money involved will not be known until they have been valued. (July 17, 1951. H. C. Debates, Vol. 490, col. *98*.)

Exemption of farm cottages from development charge

In a written reply to Miss Ward, who asked why, without statutory authority, the Central Land Board is seeking to insist on the completion of agreements in respect of farm cottages exempt from development charge at a cost of 6d. in England and 2s. 6d. in Scotland, the Parliamentary Secretary to the Ministry of Local Government and Planning (Mr. Lindgren) said that such cases are not exempt from development charge, but payment is postponed whilst the house is occupied by a farm worker. To postpone the charge an agreement must be got from the developer to pay if the house later ceases to be occupied by a farm worker, and this agreement requires to be stamped according to the law applicable in England and Wales or Scotland, as the case may be. (July 24, 1951. H. C. Debates, Vol. 490. col. *174*.)

Development Charge (Interest)

In a written reply to Mr. Hutchinson, the Minister of Local Government and Planning (Mr. Dalton) said that he was aware that a rate of interest of 4½ per cent. is charged by the Central Land Board upon outstanding instalments of development charge in cases where the developing owner is not able to meet the whole of the charge before development commences. The reason for this rate of interest is because the security is only a second mortgage. (August 1, 1951. H. C. Debates, Vol. 490, col. *340*.)

Ministerial Information and Circulars

Control of Advertisements: Challenge of Existing Advertisements

Circular No. 52/51; August 2, 1951

1. I am directed by the Minister of Local Government and Planning to refer to the situation arising after July 31 when all outdoor advertisements come under full control.

2. The Minister looks to Authorities to use their powers with energy but also with discrimination.

3. Nearly every Authority has some localities badly needing improvement by the removal or modification of existing advertisements.

4. But the Minister thinks that it will be in everybody's interest that the challenge procedure should be used in an orderly and gradual way. Authorities should not challenge a large number of advertisements all at once. This would not only make it difficult for the advertisers, but would inevitably produce a sudden increase in the number of appeals. Nothing will be lost by proceeding gradually. The power of challenge does not lapse.

5. The Minister also thinks that it is desirable to avoid, as far as possible, sporadic challenges over wide areas. He suggests that Authorities might systematically review compact areas and in these areas challenge the advertisements

which they consider injure amenity or are dangerous. The selection of advertisements and areas is, of course, entirely for the Authority, but obviously they should concentrate, at any rate to begin with, on the areas in which improvement is most urgently needed. The Minister hopes that Authorities will give early attention to those rural areas for which special control is not contemplated.

6. The Minister trust also that Authorities will make full use of their powers under Regulation 29 (1) (*b*) to extend the time within which applications have to be made. Individual firms of advertisers may be subject to heavy pressure of work in dealing with challenges, and the Minister would like Authorities to be sympathetic when requests for extension of time are made.

7. Where the Authority is prepared to see an advertisement remain in modified form, the matter should wherever possible, be settled by discussion. The Minister attaches importance to this, and hopes that both sides will do their best to reach agreement in as many cases as possible.

Central Land Board Practice

Report of the Central Land Board for 1950–1951

The annual report of the Central Land Board to the Minister of Local Government and Planning for the year ended March 31, 1951, has been presented to Parliament and published as a White Paper.[1]

The following points are taken from the report:

Claims on the £300 million fund.

The Board had issued 197,214 determinations of development value by March 31, 1951, out of a total number of claims of approximately 825,000. Thirty-nine per cent. of the determinations were in respect of land which the Board considered to have no development value and one per cent. in respect of small claims excluded under s. 63 of the Act. Two hundred and eighty-eight appeals were lodged, of which ninety were later withdrawn. No appeal has yet been heard. The tendency has been for the smaller and simpler claims to be settled first.

Contributions by the Board towards fees incurred by claimants in employing professional advisers, amounted in the year to £702,998. These contributions are paid as soon as possible after the determinations of development value have become final.

With regard to the power of the Board under s. 60 (4) of the Act to aggregate claims in the same ownership, the Board state that in cases where aggregation is to the advantage of the claimant they are prepared to exercise this power on application. In other cases the Board exercise their power sparingly and only where separate claims would produce an artificially inflated development value. They do not use this power where the effect would be to exclude a claim under the minimum provisions of s. 63.

Claims under s. 59.

29,346 claims were registered under the Planning Payments (War Damage) Schemes, and are being dealt with by the Board.

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[1] H.M. Stationery Office, price 9d. net.

Development charges.

The number of applications for the assessment of development charge during the year was 76,152. This was 35,188 less than in the previous year, but this was partly due to a change in the method of recording applications which are clearly exempt. Also, the field of exemption from liability to charge was considerably widened during the year.

Applications found to be exempt or to attract a nil determination numbered 36,813—about 47 per cent. of the total—and 21,489 were not determined either because they were premature or because the applicant had no interest in the land.

The Board received £3,159,492 in development charges in 14,992 cases compared with £2,084,616 in 16,511 cases during the previous year. The larger average per case is mainly due to a few large individual payments—two industrial projects, for instance, accounting for a total of over £250,000.

A further £1,295,924 was set off against claims for depreciation of land values in cases of " near-ripe " land.

Exemption of rebuilding where land taken for street widening.

The Board have had under consideration the incidence of development charges in the case of a local authority acquiring land from a private owner for a street-widening scheme necessitating, as is often the case, the erection by the owner of new premises behind his new frontage. On the basis that the owner should be able to rebuild free of development charge only that proportion of the original building which stands on the land remaining in his possession, the local authority would have to pay, under the heading of injurious affection, compensation for the fact that the frontage owner would incur development charge if he rebuilds to the old dimensions. This would sometimes involve the local authority in heavy expense. Before the Act of 1947, moreover, local authorities could often get narrow strips of frontage at very low cost, sometimes even for nothing, if the owners were left with sufficient depth for their own development. The Board therefore decided that where there is room on a site, a portion of which has been taken for the sole purpose of street-widening, the rebuilding of the whole of the original building, together with its tolerance, on the remainder of the site is free of development charge.

Development charge on contravening development.

The Board have made eleven orders under s. 74 of the Act of 1947 in respect of development carried out in contravention of the Act. A penalty has not been imposed in any case.

Disputes as to " prevailing use " under ss. 82, 84, *and* 85.

Section 110 provides that any disputes arising under the provisions of the Act as to what is the use which prevails generally in the case of contiguous or adjacent land shall be determined by the Central Land Board, from whose determination there is an appeal to the Minister or the Secretary of State. The Board are advised that their power to determine disputes under this section does not extend to any case where the " prevailing use " valuation is not enjoined by the Act, but in a suitable case they do not refuse to give an opinion where the parties agree to refer the question to them.

The Board have prepared a form of procedure which they recommend to parties wishing to refer to them any dispute on prevailing use. They have also made special arrangements for the rapid treatment of disputes arising on the assessment of a development charge, where they themselves are a party, in order that any developer wishing to appeal against their decision may be in a position to do so as soon as possible.

Up to the end of the year the Board had given one determination under s. 110 and one decision on a case referred to them by agreement between the disputing parties. No formal determinations had been necessary on any dispute as to what is prevailing use for the purpose of a development charge.

Near-ripe land.

A total of £911,701 representing 1,865 cases was set off against claims under the builders' near-ripe scheme during the year, and similarly in the case of the single plot owners' scheme £384,223, representing 1,990 cases, was set off against claims for loss of development value, instead of payments of development charge being required.

The Board have obtained the approval of the Treasury for ignoring small excesses of development charge over development value in respect of single plots within the scheme where such excesses arise solely by reason of changes in market value since 1947.

The market in land for development.

The Board again point out that a prospective developer is penalised unless he can buy land at existing use value, and observes that sales at or near existing use value still appear to be more the exception than the rule, due largely to the scarcity of building licences. Particular attention is drawn to the power of local authorities to buy housing land at the existing use value for resale to private developers, and the report speaks of the readiness of the Board to co-operate with authorities who desire to meet in this way, the needs of those to whom they have allotted, or hope to allot, building licences. The Board made ten compulsory purchase orders during the year.

Notes of Cases *

HOUSE OF LORDS

Compulsory Purchase—Notionally Rebuilt War-Damaged Flats

East End Dwellings Co., Ltd. v. Finsbury Borough Council (July 28, 1951). The House of Lords (Lords Porter, Morton, Reid, Tucker and Asquith) allowed this appeal from the decision of the Court of Appeal [1] and restored the judgment of Devlin, J.[2]

The site of a block of rent-controlled flats which had been destroyed by war damage and in respect of which a payment of cost of works basis had been determined, was compulsorily acquired by the Borough Council. By s. 53 (1) of the Town and Country Planning Act, 1947, the compensation was to be the value which the premises would have " if the whole of the damage had been made good before the date of the notice to treat ".

The arbitrator who assessed the compensation decided that having regard to the decision of the Court of Appeal in *Ellis and Sons Amalgamated Properties, Ltd.* v. *Sisman*, [1948] 1 K. B. 653, it should be calculated on the basis that the limitations on the legally recoverable rents which had formerly applied to the premises under the Rent Restrictions Acts, would not apply to the notionally rebuilt flats. That view had been upheld by Devlin, J., and after reversal by the Court of Appeal, was now restored by the House of Lords.

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* Full reports of these cases will be published in *Planning and Compensation Reports*.

[1] (1950) 1 P. & C. R. 257; [1950] J. P. L. 893.

[2] (1950) 1 P. & C. R. 104; [1950] J. P. L. 420.

Appeal allowed, with costs.

HIGH COURT: KING'S BENCH DIVISION

Compulsory Purchase by Central Land Board

Travis v. Minister of Local Government and Planning (July 23, 1951). This was an appeal against a compulsory purchase order made by the Central Land Board under s. 43 of the Act of 1947, and confirmed by the respondent Minister. The grounds of appeal were first, that the Board and the Minister had acted *ultra vires* since planning permission for development of the land had not been granted when the Board made the order; and secondly, that the order was made for purposes outside those for which the Board could acquire land compulsorily, *viz.*, to enforce or encourage a policy of sales of land at existing use value.

Devlin, J., held that even if it was necessary under s. 43 for planning permission to be granted at the time of the acquisition, the appellant had not shown that it had not been so granted. Planning permission in this case had not been granted until after the Board had made the order, but the order was of no legal effect until confirmed and the acquisition did not take place until later than that.

On the second ground, the appellant had sought to distinguish *Earl Fitzwilliam's Wentworth Estates Co.* v. *Minister of Town and Country Planning*[3] by contending that although the Board could properly seek to prevent land from being sold at more than its existing use value they had no power positively to promote the development of land by compulsorily acquiring land which had been withdrawn from the market. But the Court held that although the land had been withdrawn from the market the object of the Board in acquiring it was not solely to promote its development, and they were acting within their power of preventing sales at above existing use value.

Appeal dismissed.

Compulsory Purchase under Housing Acts

Watson v. Minister of Local Government and Planning (July 24, 1951). The Havant and Waterloo U. D. C. had made a compulsory purchase order which had been confirmed by the respondent Minister, under Part V of the Housing Act, 1936. The purpose of the acquisition was to house certain persons in need of housing accommodation, some of whom were living within the urban district and others within the county borough of Portsmouth. The appellant contended that having regard to s. 71 of the Act of 1936, the local authority's power to acquire compulsorily was limited to providing new houses in accordance with " the needs of the district ", and since the land was required partly for housing people of Portsmouth the urban district council had no power to make the order.

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[3] (1951) 1 P. & C. R. 429; [1951] J. P. L. 296.

Devlin, J., held that as the words were not the needs of the people of the district, but the needs of the district itself, it was not outside the powers of the local authority to have regard to the fact that people living outside the district of the authority might have to find accommodation within that district.

Appeal dismissed with costs.

Compulsory Purchase—Land of a Local Authority

Middlesex County Council v. Minister of Local Government and Planning and Islington Borough Council (July 27, 1951). In January, 1949, Islington Borough Council made a compulsory purchase order in respect of 123 acres of the Trent Park Estate, Southgate, which they required for use as a cemetery. In July, 1949, the Middlesex County Council made two compulsory purchase orders, comprising 941 acres of the estate, including 123 acres the subject of the previous order.

The Minister of Health, as confirming authority, arranged for a public local inquiry to be held commencing on November 9, 1949, but two days before this date the Middlesex County Council entered into an unconditional contract to purchase the whole 941 acres from the owner.

The compulsory purchase orders made by the Middlesex County Council were then withdrawn, and the public inquiry took place only in relation to the order made by the Islington Borough Council. In March, 1950, the Minister modified this order by reducing the area to 43 acres, and confirmed it.

By para. 9 of Sched. I of the Acquisition of Land (Authorisation Procedure) Act, 1946, " a compulsory purchase order shall, in so far as it authorises the compulsory purchase of land which is the property of a local authority . . . be subject to special parliamentary procedure in any case where an objection to the order has been duly made by the local authority . . .". The question in this case was whether special parliamentary procedure, under the Statutory Orders (Special Procedure) Act, 1945, should have been followed, the county council not having been owners of the land at the date when the compulsory purchase order was made or at the time when they objected to the order, but having become owners prior to the public inquiry.

Ormerod, J., held that as the real purpose of the inquiry was to investigate circumstances as they then existed and not merely as they existed at the time when the order was made, the date of the inquiry was the material time. Any person who objected to the order was entitled to be heard at such an inquiry, and at the date of the inquiry the county council had made objection in due form and were the owners of the land.

The compulsory purchase order must therefore be quashed.

PETTY AND QUARTER SESSIONS

Enforcement notice—Caravan site

Kilby v. Bromsgrove Rural District Council[1] (Petty Sessions, June 1, 1951; County of Worcester Quarter Sessions (Deputy Chairman, J. F. Milward, Esq.), July 13, 1951). The Bromsgrove Rural District Council, exercising powers delegated to them by the Worcestershire County Council as local planning authority, served an enforcement notice on Mr. J. H. Kilby, on February 7, 1951, alleging that development consisting of the use of land at Dells Farm, Wythall, as a caravan site had been carried out in contravention of previous planning control within the meaning of s. 75 of the Act of 1947, and requiring him to take the following steps by May 12, 1951, for restoring the land to its condition before the development took place, namely, to remove the caravans from the land and cease using the land for the purpose of siting caravans.

Mr. Kilby appealed under s. 23 (4) to the Redditch County Petty Sessions Court, who varied the notice by substituting the words " reduce the number of caravans on the land and restrict the number in future to six " for the words " remove the caravans from the land and cease using the land for the purpose of siting caravans ".

Mr. Kilby appealed to Worcestershire Quarter Sessions.

A resolution to prepare a planning scheme had been passed by the rural district council on February 21, 1933, and had taken effect under the Town and Country Planning Act, 1932, on April 1, 1933. At that time the field in question was used for agricultural purposes. Some caravans of the gipsy type had been stationed in the adjacent rickyard intermittently before 1933, and it was not disputed that a few others of the same type had been placed on the edge of the field from time to time before 1933 without interfering with the agricultural use of the field. Since then trailer caravans had come on to the land, until at the date of the enforcement notice there were some twenty-one, all of them occupied as homes all the year round. It was no longer possible to carry out any real farming in the field. The authority contended that the change of use from agriculture to a caravan site was development under the Act of 1932. No permission to develop in this way had ever been granted and consequently the enforcement notice was valid. The respondent authority did not object to the magistrates varying the notice as they had done.

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[1] We are indebted to the Clerk of the Worcestershire County Council for the information relating to this case.

The appellant contended that on April 1, 1933, the field was being used for accommodating caravans, and was still so used, and there had been no change of use. Also, that the agricultural use of the field had not been affected, because it was still possible to carry on as much agriculture on the field as was carried on previous to April 1, 1933.

The Court decided that the use had been changed because the predominant use of the field was originally agriculture, the use as a caravan site being then merely incidental, and now the predominant use was as a caravan site.

Appeal dismissed with costs.

Enforcement notices—Houseboats

The Shoreham Houseboats Case (July 22, 1951). The West Sussex County Council had served enforcement notices on a large number of owners of houseboats moored in the River Adur at Shoreham, requiring removal of the boats by December 31, 1951. On an appeal to the Court of summary jurisdiction at Shoreham by certain of the owners it was contended by counsel that the notices were invalid.[2]

Whilst the magistrates were in retirement the parties came to an agreement, and the chairman of the Court said that effect would be given to that agreement, under which the enforcement notices were quashed and 115 guineas costs awarded to the appellants.

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[2] An article dealing with the points of law involved in this case is published at p. 506, *ante*.

Lands Tribunal Decisions[*]

Kane and Others v. Calne and Chippenham R. D. C. (July 25, 1951). This was a reference for the determination of the compensation payable upon the compulsory acquisition of a strip of agricultural land with a frontage of 270 feet to the highway and average depth of 100 feet, area .618 acre, at Charlcote, Wiltshire, on which stand two old cottages in ruinous condition, and a shed.

The claimants were Mr. H. P. Kane and the administrator of the estate of the late Mr. W. W. Kane as joint tenants, and the Public Works Loan Board as mortgagees. No claim had been submitted on behalf of the tenants in common of the equitable interest, and they were not represented at the hearing. The Public Works Loan Board made no submissions as to value, but were prepared to accept a valuation of £325 submitted by the acquiring authority.

The Tribunal (J. P. C. DONE, ESQ., F.R.I.C.S.) considered that the authority's valuation took into account all the potentialities of the property and represented its value estimated in accordance with the statutory requirements. The compensation was accordingly assessed at £325.

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[*] A full report of this case will be published in *Planning and Compensation Reports.*

Correspondence

To the Managing Editor,
Journal of Planning Law.

Sir,

Prices on Sales of Land with s. 58 Claims

The following brief particulars of two sales of land, offered by auction in our sale rooms this week after the usual advertisements, may be of interest to your readers.

First Lot

Frontage 90 ft. to adopted road. Depth 200 ft.

Wooded site in first-class residential position. Building line 60 ft. All services available.

Brick-built garage on site, but only suitable for future use after alterations. If the site was developed with two houses the garage would have to be demolished.

The property was offered with vacant possession and with the benefit of the development value claim, which in respect of this site was apportioned at £1,100.

Price realised—£600.

Second Lot

Frontage 150 ft. to adopted road. Depth 126 ft.

In middle-class residential district. All services available.

Offered with the benefit of the development value claim, the apportioned figure in connection with the site being £1,650.

Price realised—£875.

Yours faithfully,
Stimpson, Locke & Vince,
Chartered Surveyors, Auctioneers
and Estate Agents.

Watford.

To the Managing Editor,
Journal of Planning Law.

Sir,

Practical Point 326—Planning Permission for Light Industrial Use—Appeal Against Time Limit

My attention has been drawn to the question and answer under this heading.

Quite frankly, I am astonished at the history of events disclosed by your correspondent and the manner in which this history has been applied under past and present planning control.

I am even more amazed at the attitude of the Corporation concerned, who, as far as one can judge, have entirely failed to carry out the spirit and letter of circular instructions emanating from competent Ministries from time to time.

If the property under discussion had the benefit of a light industrial use consistently "since before 1914"—and, one therefore assumes, before the date upon which the Interim Development Authority passed a resolution to prepare a Planning Scheme—surely there is nothing more to be said about the case; the premises are entitled to the benefit of an existing use qualification accordingly.

Why the necessity of obtaining planning permission in 1948? Why the need to appeal?

Allow me to suggest that your correspondent address a simple enquiry to the Planning Authority in the following terms:—

> "The history of this property discloses an uninterrupted use for industrial purposes since 1914, before the Corporation's resolution to prepare a Planning Scheme for the purposes of the Town and Country Planning Act, 1932 *et seq.* Will you please confirm, on behalf of the Corporation, that this industrial use, still in operation, is accepted by the Corporation as "existing use" for the purposes of the Third Schedule, Town and Country Planning Act, 1947, Class 3, Town and Country Planning (Use Classes for Third Schedule Purposes) Order, 1948, and Class 3, Town and Country Planning (Use Classes) Order, 1950?".

I can assure your correspondent from practical experience that this course has been adopted by me in many cases, and that it has never failed to produce the proper answer. If the Corporation hesitate or show an inclination to refuse, he can take a firm line with confidence in its outcome. Certainly he should be able to save his clients the expense of any further proceedings.

Yours faithfully,

HOWARD SHARP, F.A.I.

3/4 Clements Inn,
London, W.C.2.

TO THE MANAGING EDITOR,
JOURNAL OF PLANNING LAW.

Sir,

Compulsory Acquisition

I feel I must write to you about the review of the "Guide to Compulsory Purchase", appearing in the August number of J. P. L. (at p. 477) and signed by a person with initials very similar to my own.

Whereas it might have been useful to define local or public authorities for the purposes of the 1919 Act where there is a reference to that Act I would respectfully point out to your reviewer that that statute does not authorise *any* person to acquire land compulsorily. Further, again with respect, I would suggest that the criticism of the use of the expression "quasi-contract" (especially in the context used by the author) to describe the relationship between acquiring authority and vendor after service of the notice to treat and assessment of the compensation is not really so far off the mark—the normal remedies open to a vendor under an open contract for sale are at that stage available to such a vendor.

The position of the statutory tenant in relation to compulsory acquisition is certainly worthy of attention, but it seems that such a tenant must be treated as falling within s. 121 of the 1845 Act, and that he can be "got rid of" under that section on payment of compensation (see the present work at p. 26).

Your faithfully,

J. F. Garner.

Andover.

Notes of Planning Decisions*

Possibility of Nuisance from Unreasonable Behaviour—Conversion of Barn to Dwelling-house Near Church

The following is an extract from the letter of the Minister of Town and Country Planning, dated December 14, 1950, allowing an appeal against the decision of the Cuckfield Rural District Council refusing consent to the conversion into a dwelling-house of a farm building on land adjoining the village church at Ardingly.

" The building is an old tithe barn in about 7½ acres of neglected land which the appellant intends to restore to full agricultural use. It is about 40 feet from the boundary of the churchyard, and the council consider that the display of washing so close to the church would be undesirable and that, if the house were later vacated by the appellant and occupied by some inconsiderate person, household noises including 'the blare of wireless' would interfere with church activities.

The site of the barn is about 4 or 5 feet below the level of the churchyard, from which it is quite well screened by a hedge. The conversion of the barn and its reasonable use as a dwelling would contribute appreciably to the reclamation of the land and the Minister sees no reason to fear that it would be detrimental to the amenities of the church. He accordingly allows the appeal.

The Minister has not thought it proper to take into account the risk of nuisance which might arise from unreasonable behaviour. Redress in such a matter lies elsewhere than in the Town and Country Planning Act, 1947."

Personal Hardship as Grounds for Temporary Permission—Converted Bus as Living Accommodation

The following is an extract from the letter of the Minister of Local Government and Planning, dated May 30, 1951, following an appeal against the refusal of the Chertsey Urban

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* The Managing Editor desires to express his thanks to those who have been kind enough to send to this Journal particulars of planning decisions, and hopes that he will continue to receive particulars of planning decisions which involve points of general interest.

District Council to permit the retention and continued use of a converted single-decker bus as dwelling accommodation on land at Trys Hill, Lyne.

"The site is about three-quarters of an acre and the Minister understands that the appellant placed the converted bus body on the site and completed purchase of the land after being refused planning permission by the council.

The Minister is in complete agreement with your council that the siting of a bus body on this land for use as dwelling accommodation is undesirable from every point of view; not only is the structure lacking in essential services, but it constitutes an offence to the beauty of this part of the countryside, and if permitted to remain would lead to conditions quite untenable and uncontrollable.

But for the personal circumstances of the appellant the Minister would have had no hesitation in dismissing the appeal outright. He is greatly concerned, however, over the hardship that would be caused to the appellant who has a young baby, if this appeal were dismissed.

He has, therefore, decided solely on compassionate grounds, to allow the appeal to the extent that he permits the retention on the land and the continued use of the bus body as dwelling accommodation for a period of one year only from the date of this letter, subject to the removal of the buildings and the discontinuance of the use of this land at the end of this period."

[By courtesy of the County Planning Officer, Surrey County Council.]

Erection of Holiday Chalets on Land Reserved for Permanent Residential Development

The Minister of Local Government and Planning has dismissed an appeal against the refusal of Herne Bay Urban District Council to permit the erection of a number of summer holiday chalets on land at the Studd Hill Estate, Herne Bay.

At the local inquiry which was held into this appeal, the council stated that Studd Hill Estate was originally intended for holiday chalets but since the war and owing to the scarcity of houses the character of the estate had changed. Most of the chalets are used continually as dwelling-houses and many have been added to. Some permanent bungalows have also been built on the estate. The council think therefore that this land should be reserved for permanent residential development.

The Minister considers that the erection of summer holiday chalets would be incongruous with the new character of the estate which he thinks should be maintained.

[By courtesy of the Public Relations Officer, Kent County Council.]

Change of Use from Foot Clinic to Doctor's Consulting Rooms, etc.—Replacement of Shop Front by Brick Wall and Window

The following is an extract from the letter of the Minister of Town and Country Planning, dated December 20, 1950, following an appeal against the decision of the Surbiton Borough Council that the proposed conversion and use of the ground floor of a house at Ewell Road, Epsom, to provide for consulting rooms, examination and waiting rooms, with lavatories and office, constitutes development for the purposes of the Town and Country Planning Act, 1947.

The premises were formerly used as a foot clinic and were so used at the appointed day, and prior to that use as a shop or business premises.

" The Minister has come to the conclusion that the proposed use of the premises in question as doctors' consulting, examination and waiting rooms, and the previous use as a foot clinic, fall within Class XV of the Town and Country Planning (Use Classes) Order, 1950. The fact that the use as a foot clinic was a contravening one is irrelevant for this purpose. The Minister accordingly determines that the proposed change of use does not constitute development within the meaning of the Town and Country Planning Act, 1947.

The Minister is advised, however, that the alteration to the exterior of the building by the replacement of the existing shop front with a brick wall and window represents a material change in the external appearance of the building and therefore constitutes development."

[By courtesy of the County Planning Officer, Surrey County Council.]

Limited Period Permission to Restrict Value Because Compulsory Acquisition Contemplated

The following is an extract from the letter of the Minister of Local Government and Planning, dated February 12, 1951, allowing an appeal against the conditions attached by the Cheshunt Urban District Council to their permission for the erection of seven greenhouses at a nursery at Windmill Lane, Cheshunt. The conditions limited the permission to a period ending on December 31, 1969.

" It was stated on behalf of your council that they proposed at some future date to acquire the nursery and to incorporate it in the adjoining public park. The condition is intended to restrict the value of the land to its present use value because the council feel that they would otherwise find it financially impossible to carry out this proposal.

The Minister has come to the conclusion that it would not be reasonable to allow the conditions to stand. It appears that the council do not object to the proposed greenhouses as such, but only to their value for removal purposes. Apart from the question whether or not the building operations proposed are permitted under the General Development Order, the Minister considers that no sufficient planning reason has been shown for restricting the permission to twenty years."

" *Works for erection of a building* " *under s.* 78

The following is an extract from the letter of the Minister of Town and Country Planning, dated December 21, 1950, following an appeal against the determination of the Watford Rural District Council under s. 17 of the Town and Country Planning Act, 1947, that proposals for erection of buildings on certain plots on the Oxhey Grange and St. Meryl Housing Estates, Carpenders Park, would involve development for which permission was required under the Act.

" The Minister understands that two of the thirteen sites referred to in the application for a s. 17 determination dated June 21, 1949, have now been withdrawn. He is satisfied that works for drainage, foundations or concrete site covering were commenced with planning permission on all of the remainder before the appointed day and accordingly he determines that permission is deemed to have been granted for the appellants' proposals on these sites."

[By courtesy of the County Planning Officer, Hertfordshire County Council.]

Book Reviews

Planning Appeals. By Harold J. J. Brown, Barrister-at-Law. (Sweet & Maxwell, Ltd. 1951. xv and 87 and (index) 7. 12s. 6d. net.)

Mr. Harold Brown has written an elementary primer on the principles, practice and procedure of appealing to the Minister of Local Government and Planning under the provisions of the Town and Country Planning Act, 1947.

He divides his book into two parts, the first of which deals with the right of appeal and the procedure to be followed. Here is set out an account of the effect of the statutory provisions relating to appeals without quoting them *in extenso,* and an indication of some of the considerations to which the appellant should have regard in deciding what course to adopt. Within the limits he has set himself, Mr. Brown has dealt with this part of his subject quite fully, but it is a pity that he has precluded himself from, or at any rate not found a place for, some mention of the difficult questions that arise concerning appeals to a court of summary jurisdiction against the service of an enforcement notice under s. 23 of the Act of 1947. Although not strictly within the scope of this book, there is possibly no aspect of the law of Town and Country Planning in which the expert guidance offered by Mr. Brown is more necessary to those less expert, and such questions, arising in the alternative to planning applications, are closely related to planning appeals, for they must affect the mind of the developer in deciding what course to pursue.[1] I wish, too, that Mr. Brown had included somewhere the full text of the relevant statutory provisions which he has paraphrased.

The second part of the book is described as a statement of general principles and other considerations which may affect the determination of a planning appeal. It is based on a collection of reported decisions, which are not themselves set out but indicated by a system of references and headnotes. Not many principles have emerged, and where decisions seem to be in conflict, as in the case of conditions that a planning permission shall be void if the development to which it relates is not begun and completed within a fixed period of time, no attempt is made to explain the difference. In places, as for example, the chapter on decisions relating to zoning, Mr. Brown has contented himself with giving a classified list of development that has been permitted and refused. Subject to the effect of changing circumstances on the decisions of the Minister, and presumably of changing Ministers, the result is a useful book of reference. It is not pretended that the propositions advanced are of other than a tentative nature, but a work of this kind does provide a guide, for those concerned in the practice of this branch of law, to the attitudes of the Minister to certain sets of facts. The arrangement of these sets of facts has here been carried out excellently, and the considerations that arise upon them lucidly discussed.

Christopher Hodson.

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[1] A discussion of some, at any rate, of these most difficult questions will be found in the article "Appeals against Enforcement Notices", *ante,* p. 506.—*Managing Editor.*

Supplement to Valuation for Compensation and Development Charges. By Ronald Collier, F.S.I., F.A.I. (Butterworth & Co. (Publishers) Ltd. 1951. viii and 178 and (index) 7. 15s. net; with main work, 32s. 6d. net.)

The purpose of this supplement is to bring up to date the main volume which was written in the light of the law on that modern Domesday, July 1, 1948.

The book is a useful one for the valuer's desk, but the authority for statements is not always given. For example, on p. A36 there are three paragraphs under the heading "Vacant Property" but no references to s. 12 (5) (*c*) of the Act, a report on the ministerial decision, s. 78 (2), and the relevant C. L. B. note, on which the four factual observations respectively rest.

The right to rebuild anywhere within the original curtilage is admitted in para. 15 of Practice Notes whereas it might be inferred from p. A.33 that the question is still open. If other authority is required *Low* v. *Innes* (1864), 4 De G. J. & Sm. 286 may be useful.

Also on p. A33 will be found a reference to the Town and Country Planning (Amendment) Act, 1951 (not indexed). It is to be noted that this Act requires permission to be obtained for making good war damage; improvements and alterations to war damaged property not materially affecting the external appearance thereof, will only require permission in so far as they are inseparable from the making good.

On p. A37 it is said that upon rebuilding, a dwelling-house may be enlarged by 7,500 cu. ft. or 10 per cent. of the former cube, whichever is the greater. The authority for the statement is not given, but it is of course an exemption from development charge, not an exemption from planning permission as might appear from the general heading, "Development".

On p. A41 it seems to have been overlooked that under the Use Classes Order SI 1950, No. 1131, the term "shop" includes a restaurant, and that a post office is not an office but by implication a shop.

On the question of site value (A72–74) *Regents Park Development Co.* v. *St. Marylebone B. C.* (1951), 1 P. & C. R. 394, should be studied. Also, in considering sales in a "free market" (p. A73) regard should be had to *Priestman Collieries, Ltd.* v. *Northern District Valuation Board and Ors.* (1950), 1 P & C. R. 131.

The author seems to reach the same conclusion on rule 3 of s. 12 of the Acquisition of Land (Assessment of Compensation) Act, 1919 as did the present reviewer ([1951] J. P. L. 86 and 204). That, no doubt, means one issue now beyond question!

At p. A87 the author says "severance, injurious affection and disturbance cannot be differentiated". Apparently the judgment of Scott, L.J., in *Horn* v. *Sunderland Corporation*, [1941] 2 K. B. 26 has been overlooked. There are two distinct heads of claim: (1) for land acquired and disturbance (these together forming the "purchase money" for purposes of stamp duty), and (2) for severance and other injurious affection. Under the 1919 Act the notice of claim must show the build-up of the claim for lands taken, disturbance, and severance and injurious affection.

The summary of compensation cases in Part V is very useful, but in the light of rule 5 of the 1919 Act (equivalent reinstatement), which now applies to acquisitions by statutory undertakers, *Metropolitan Ry. &*

District Ry. v. *Burrow* (1884), *The Times,* November 22, might well have been omitted. It has little, if any, modern application.

Looking back to [1951] J. P. L. 266 the case *Glass* v. *Inland Revenue,* 1915 S. C. 449, is particularly interesting. Summarising Mr. Collier's summary on p. A115, a special purchaser without powers of compulsory purchase had paid £8,000 for certain farm lands in 1911. The value in the open market, with the assumption of a willing seller and having regard to the value to the special purchaser, was determined, as in 1909, to have been £4,629. The agricultural value was around £3,000. The *willing* seller cannot expect to get the whole value to the special purchaser. Regard to this should be had when reading pp. A13–14.

W. A. LEACH.

The Leasehold Property (*Temporary Provisions*) *Act, 1951.* Current Law Guide, No. 8. By J. Muir Watt, M.A., Barrister-at-Law. (Sweet & Maxwell, Ltd; Stevens & Sons, Ltd. 1951. ix and 78 and (index) iii. 7s. 6d. net.)

This guide appears to have won the race for the publication of a book on the 1951 Act. Forty-five pages are devoted to the text in which the terms of the Act, both in relation to dwellings and shops, are explained section by section. The language used in the text is clear, simple and concise. Surveyors, estate agents and others interested in property law will find that they can obtain a clear picture of the working of the Act from the text alone. Those who require rather more technical matter can refer to the words of the Act itself, which is printed, with annotations, after the text. Sufficient detail is given in the notes for all ordinary purposes.

Despite the small compass of the Guide, Mr. Muir Watt has not been unambitious. Not only does he deal with the Act itself but he provides references to the reports of the Leasehold Committee and to Parliamentary statements in order to set the Act in its proper perspective and to indicate the mischief which it is designed to remove. In the result, the reader can compare the remedy recommended by the Committee and that adopted in the Act. In addition, the author has included much valuable comment not only on matters of legal interpretation but also on the likely effect of the Act on land values and kindred matters. He has even ventured opinions on some of the more controversial expressions used in the Act. Most of his conclusions will probably find general acceptance, although it is doubtful whether the same can be said of his definition (see the notes to pages 5 and 47) of the important phrase "term of years certain" which occurs in s. 1 and elsewhere in the Act. The author says that "a term certain" implies simply that the maximum duration of the term is definite and that its certainty would not be affected by the possibility of earlier determination whether by forfeiture or by the exercise of an option contained in the lease. With respect to Mr. Muir Watt, this is too broad a proposition which is not supported by the authorities cited by him on p. 47. S. 205 (1) (xxvii) of the Law of Property Act, 1925, mentioned on p. 47, is concerned with the definition of a term of years absolute and the fact that a term of years certain is there contrasted with a term liable to determination by notice is indeed against the author, for the inference must be that, at least for the purposes of the 1925 Act, a term liable to determination, etc., is not the same as a term certain. Moreover, the passages cited from *Woodfall* are concerned with the commencement of a tenancy and not its duration, and also with a term of years absolute. The passage from *Foa* and the other authorities mentioned are much too general in their import to be of much assistance in interpreting the words of this statute. S. 1 begins: "Where a tenancy was granted for a term of years certain . . . " and the answer to the problem may lie in all those words read together, it being primarily necessary, on that basis, to consider the certainty of what was *granted*. Thus it may be that a term of years subject to earlier determination at the option of the tenant *only* is certain for this purpose, while in another case where both parties have such option the contrary is true. In the former case the term of years *granted* is certain because the tenant knows how long he can remain in possession if so inclined, and in the latter event it is uncertain because the tenant does not possess this knowledge. This suggested solution has the advantage that it is not at variance with the general law (see *Woodfall,* p. 221, text and note (*x*)) and that it also explains why, by a process of similar reasoning, a term liable to forfeiture may yet be certain.

Another statement with which the reader may disagree is in the second sentence on p. 29. If that sentence is intended to assert that a sub-tenant of an entire dwelling-house not subject to the Rent Acts obtains from s. 7, in the case of forfeiture of the superior tenancy, something more than a continuation against the reversioner of contractual rights which he had previously enjoyed against the mesne landlord, no justification is to be found for this assertion in the Act.

These criticisms in no way detract from the merit of this Guide: rather, the author is to be admired for his courage in giving an opinion, particularly where some of the more difficult passages of the Act are concerned. Altogether, it is a very useful and commendable little book. Some minor omissions are the absence of references to the apparent disparity between subs. (4) of s. 6 and subss. (2) and (3) of that section; to s. 17 in Chapter 2; and to *Norman* v. *Simpson* and subsequent cases in preference to the cases preceding *Carter* v. *Green* in the notes to s. 7.

V. G. Wellings.

Practical Points

All questions for consideration should be addressed to "The Managing Editor, The Journal of Planning Law, 3 Chancery Lane, London, W.C.2." The questions of subscribers only are answerable in the Journal. All questions should be submitted in duplicate. The Publishers cannot accept any responsibility for the correctness of replies.

327. *Claim on global fund—development value.*

In 1949 A bought a country house with three acres of land for £7,100, with the benefit of a claim on the global fund.

The District Valuer has written that this is a very attractive dwelling-house and that he is of opinion that any development on the land would cause very serious affection, which would far outweigh development value, particularly as the major portion is back land and high post-war road costs would make the development uneconomic.

On these grounds he asks A to agree that there has been no depreciation in value through the Act. He refuses, however, to say that the erection of one or more houses on approximately one acre of the land (which is definitely contemplated by A) would not attract a development charge. A naturally cannot see why he should agree that he has no claim for depreciation if he may be subject to a development charge. What is your view? [O. C. L. & K.]

ANSWER

I agree with the District Valuer that he should not prejudice his position by deciding the amount of development charge before he is called upon to do so. The basis of calculation of Part VI claims and of development charge is different. Claims on the global sum are based on market values as at January 7, 1947, with the possibility of deferment of development due to economic circumstances. Development charge is only assessed when the land is "ripe" for development and when planning permission and the necessary licences have been obtained and on values as at the date of development. Circumstances may vary. If ownership of land and the house become separate, the affection to the house will cease to have importance as a different owner will be concerned. In any case the District Valuer can only give a decision when he has all the facts before him, and I suggest that the proper course is for A to settle the claim on the global fund on its own merits and then, when he subsequently decides to develop, to use the settlement of the Part VI claim so far as he is able (having regard to the different basis of valuation), to strengthen his case in connection with the development charge. [R. P. C.]

328. *Claim on global fund—possibility of subsequent compulsory acquisition.*

In the article " Planning as affecting interests in and value of land " at [1948] J. P. L. 222, on p. 228 it is stated that claimants for loss of development value should be very careful not to put the unrestricted value too low in case this should be used against them on a later compulsory purchase.

This view does not seem entirely to be shared, however, by the author of the article " Claims on the Global Sum " at [1949] J. P. L. p. 83.

It is our experience that claimants against the global fund are now reaching the point where the District Valuer submits his computation, and if there is the slightest possibility that in the future their land will be compulsorily acquired, claimants are desirous of foregoing their claims altogether, so that they have not prejudiced themselves in the assessment of value on a future compulsory purchase. What is the correct advice to give under the circumstances? [K. E. & C.]

ANSWER

My own view is that although any figures given on an official form not marked " without prejudice " are liable to be quoted against the person making them, too much weight should not be given in 1951 to figures given in the rush and scurry of two or three years ago. The claim form could have been left blank in this respect and this would probably have been the wiser policy as all the intricacies of framing an estimate were not fully understood at the time. When development values are agreed between District Valuer and claimant it is common practice for the agent to agree " without prejudice to restricted or unrestricted values ".

It therefore appears to me that figures given in a claim for loss of development value can be largely discounted in an assessment of value on a future compulsory purchase and there is no necessity to forego claims for this reason. At all events the form once submitted could be given in evidence even if the claim were subsequently withdrawn in the same way as if the claim against the global sum were still outstanding. [R. P. C.]

329. *Compulsory purchase—interests in land.*

Is it possible under s. 37 (1) of the Town and Country Planning Act, 1947, to acquire compulsorily a partial interest in land, *i.e.*, a leasehold interest or a freehold interest, without acquiring the freehold in the first case, or the leasehold interest in the second. It has been suggested that as it is probably not possible to designate such an interest, it is not feasible to acquire compulsorily such an interest. Is this right? [R. F. J. L.]

ANSWER

It is certainly not possible to designate for compulsory acquisition a particular interest, as it is the " land " which is to be designated, and this means a " corporeal hereditament " (see s. 119 (1)), and not, for the purposes of Part II, apparently, an interest in land. Particular interests in land can, however, be compulsorily acquired (" land " receives an extended definition for the purposes of Part IV: *ibid.*). [J. F. G.]

330. *Development value—rent restricted house.*

The owner of a private house let on a tenancy protected by the Rent Acts duly made a claim under s. 58 of the Act of 1947 for loss of development value, on the ground that the property had potentialities for conversion into a shop. The District Valuer contends that as the tenancy is protected it is impossible to say when the owner will be able to recover possession and convert the premises into a shop; and he contends that this uncertainty eliminates or at any rate considerably reduces the development value. Is this contention valid? [B. L. R. & R.]

ANSWER

If there are real potentialities a purchaser would no doubt pay more than the bare value of the house as such. No doubt he would defer the potentiality or make some allowance for a cash inducement to the tenant to move at a time when it becomes possible to carry out the works of conversion and change the use. The uncertainties clearly reduce the development value, but do not destroy it. The question is, what would a purchaser have paid on January 7, 1947? [W. A. L.]

331. *Enforcement proceedings—existing contravening use by government departments.*

During the war, three bombed sites in Mayfair previously used for private garages with residences above, were requisitioned by the Ministry of Works and an office building erected on the sites by the Ministry. This building is still in use by various government departments as offices.

The location of these three sites is zoned by the local planning authority as residential, although limited consents for the use of the main buildings (the sites are at the rear) has been granted until December 31, 1963, for offices under the Town and Country Planning Act, 1947.

We are of the opinion that these three sites and the building erected thereon comes within the scope of s. 4 (1) of the Building Restrictions (War-Time Contraventions) Act, 1946, and as no determination has been given under this Act whether the works or use fail to comply with any building law or planning control, and as no enforcement action has been taken, we take it that when the various ministerial departments vacate the building, and providing it comes into our possession, we would have the right to let this building as offices without any consents being required. [J. B. & C.]

ANSWER

Under the 1946 Act the period during which action cannot be taken by reason of the Crown occupation does not count in the five years from March 26, 1946. The local planning authority may, therefore, yet defeat the office use and the Part VI claim should be pursued.

It is possible that the limited period permissions which have been granted close further action under the 1946 Act, but if the permissions were granted under the 1947 Act they must be ignored for purposes of restricted value, although constituting evidence of the prospects of development in dealing with the unrestricted value. If granted before July 1, 1948, it must be assumed that the permissions would not be renewed as regards restricted value, whereas the prospects of renewal may be considered in dealing with unrestricted value.

In either case it is arguable that the consents up to 1963 left the authority with a margin, and on the probabilities of broad redevelopment taking or not taking place, renewals up to 1973 could be safely anticipated. Also relevant to the unrestricted value is the right to compensation under s. 18 of the 1932 Act as qualified by s. 19, regard being had in particular, however, to s. 19 (5). [W. A. L.]

THE JOURNAL of PLANNING LAW

Published by

SWEET & MAXWELL, LIMITED
2 & 3 CHANCERY LANE, W.C.2

On the First of Every Month

Subscription: £1 10s. 0d.

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"*Planning Law*" Notes

Can an appellant under s. 23 (4) (*a*) of the Act of 1947 ask petty sessions to quash an enforcement notice on a plea of "no development within the meaning of the Act"? It would be most inconvenient if petty sessions had no power to consider the matter on the appeal and were forced to dismiss the appeal, but the difficulties of construction are considerable and Mr. Megarry (*ante*, p. 513) thought that "such a construction ill accords with the words of the statute" and was inclined to answer "No". Mr. Desmond Heap considered the point a long time ago in [1949] J. P. L. 366, and came to the firm conclusion that the answer was "Yes" and proffered an alternative form of wording of the statute which would have put the matter beyond doubt. Mr. Heap's opinion is supported by Mr. Barringer and Mr. Leach in letters at pp. 620, 621, *post*, who supply further arguments for overcoming the difficulties created by the wording of the statute. The point is of considerable practical importance.

At a Ministry inquiry which commenced at Helston on September 6 into a proposal of the Admiralty to use five square miles of the sea off the Lizard peninsular as an aircraft torpedo range, objections were put forward by more than thirty local authorities, as well as by numerous organisations for the protection of amenities, and of shipping, fishery, and industrial interests.

Mr. W. A. Leach contributes the following note, inspired by the judgments in *Earl Fitzwilliam's Wentworth Estates Co.* v. *Minister of Town and Country Planning* (1951), 1 P. & C. R. 429 :—

In para. 51 of the Ministry's publication "Control of Mineral Working"[1] it is stated that "it is thus contrary to the intention of the Act that a mineral undertaker purchasing land for mineral working should pay the mineral value either wholly or partly, to the landowner". This assertion is based on

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[1] See [1951] J.P.L. 126.

"arguments" in para. 50 which are really no more than contentions to the like effect. The Governing Principle of the Development Charge Regulations (SI 1948, No. 1189) may be a proper principle in relation to the determination of development charge, but there is nothing in the Act to restrict sales by any such theory. Indeed, if the Governing Principle represents a valid use of the Act, then apparently the Central Land Board can achieve their purposes without compulsory acquisition. It is not for the Board to decide that land ought to be developed now in order that they may get their development charge. This is a planning measure, not a revenue collecting measure, and whether or not there are reasons in the public interest why a particular piece of land should be developed and compulsion applied over and above that applied to any other land, is a matter for the planning authority.

In short, the acquisition of land to ensure development is a matter for planning authorities : the price level of private sales can be influenced by the application of the Governing Principle : the Central Land Board can acquire land to test the market by selling land with the benefit of permission at a price inclusive of development charge, but it follows that to test the market the land must be put into the open market and not bought for the benefit of, and sold to, a particular person.

If it had been the *intention* of the Act that land should not be sold at above "existing use" value it would have been easy to say so; but there is not a word in the Act to say it is illegal or even undesirable for owners to seek the best price they can get, which remains a perfectly legitimate course of action. The market will, of course, be influenced by the level of development charges.

S. 70 (2) makes provision for the avoidance of undue preference as between one developer and another. That indicates an intention of the Act. How is that intention fulfilled if the Board can acquire land for a particular developer? That alone shows preference; in the subsequent sale of the land preference or extortion may be shown.

The Minister of Local Government and Planning has made an Order dated August 20, 1951, setting up a Joint Board for the Peak District National Park (*post*, p. 599). As in the case of the similar Board for the Lake District National Park, to which we referred last month, this Board will take over all responsibilities as local planning authority for the area on a date to be announced. In the meantime, applications for planning permission should continue to be addressed to the local planning authorities who have hitherto been dealing with them.

Since April, 1941, the War Damage Commission have paid out £1,000 million in respect of war damage, £689 million of this total having been paid to private property owners and the remainder to local authorities and the Ministry of Works. Contributions by property owners to the Commission total £198 million.

The number of buildings in Great Britain and Northern Ireland damaged or destroyed by enemy action was about 3,420,000, including 3,160,000 houses. Over 40 per cent. of the buildings were in the Greater London area.

The Minister of Local Government and Planning has given his views on the drafting of planning permission in Circular No. 58/51 and an accompanying memorandum which is printed in full at p. 600, *post*. The Minister's views are based on the difficulties which have come to his notice over the past three years and although addressed to local authorities are of at least equal interest to professional advisers who will find in them some useful hints on applications for planning permission and many cogent arguments with which to attack the terms of a planning permission which does not please them.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Journal. They should be sent to the MANAGING EDITOR, *Journal of Planning Law*, 3 CHANCERY LANE, LONDON, W.C.2. *Every attempt will be made to return drafts or unsuitable copy, but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

Protected Tenants and Compulsory Purchase

By R. D. Stewart-Brown, Barrister-at-Law

A subscriber to this Journal has recently drawn attention to the question of the compulsory purchase of dwelling-houses occupied by tenants who are protected by the Rent Acts. Two points arise: is the tenant protected against eviction and is he entitled to compensation?

It is necessary first to look at the position of tenants generally under the Lands Clauses Acts. A tenant with a greater interest than a yearly tenancy or with more than a year of his tenancy to expire is entitled to a notice to treat under s. 18 of the Act of 1845, and need not be further considered. Tenants with lesser interests, whom one may call "minor tenants", fall within the provisions of s. 121 of the Act of 1845 as interpreted in *Syers* v. *Metropolitan Board of Works* (1877), 36 L. T. 277. Minor tenants are not entitled to a notice to treat. They may be "required" to give up possession of their holding before the expiration of their term or interest, and in that event are entitled to compensation for the value of their unexpired term and for other matters which may be classed together as disturbance.

The minor tenant's term may, however, expire while he is still in occupation either by effluxion of time or by reason of notice to quit given by him or his landlord. His landlord may be either his original landlord or the acquiring authority when the latter has purchased the original landlord's interest. A tenant who holds over after the expiry of his tenancy has no "interest" in the land. An acquiring authority is entitled to enter under ss. 84 and 85 of the Act of 1845 without the consent of an occupier provided all persons interested in the land have either been paid the compensation agreed or awarded or been given security for the compensation claimed. An occupier with no interest in the land who refuses to give up possession can be got rid of under s. 91 of the Act of 1845 without recourse to the Courts by the issue by the acquiring authority of a warrant to the sheriff who is then required to deliver up possession to the authority. Furthermore a tenant holding over receives no compensation because he has no interest in the land at the relevant time and has not been required to give up possession before the expiry of his term or interest.

What then is the position of a tenant of a dwelling-house who holds over and by virtue of the Rent Acts becomes a statutory tenant either before or after the compulsory purchase order is confirmed? The status of a statutory tenant has been a topic for discussion since the first Rent Acts were passed, but it seems clear that a statutory tenancy " confers no estate or interest in the land " (*Dudley and District Benefit Building Society* v. *Emerson*, [1949] Ch. 707, at p. 717). Thus a statutory tenant is in the same position *qua* the acquiring authority as a tenant holding over, save that by s. 3 of the Rent Act of 1933 no order or judgment for the recovery of possession can be made against him except under certain conditions. Since s. 91 of the Act of 1845 can be operated, possession can be obtained without an order or judgment and the statutory tenant is neither protected against eviction by the acquiring authority nor entitled to any compensation.

Where the Acquisition of Land (Authorisation Procedure) Act, 1946, applies, the authority is given (Sched. II, para. 3) a power of entry after service of notice to treat and the giving of notice of entry to owners and occupiers, without paying or securing compensation. A statutory tenant would be entitled to notice of entry as an occupier, but apart from this his position would be the same as under the original provisions of the Lands Clauses Acts. He can be evicted under s. 91 and has no right to compensation.

For the reasons given above the writer does not accept the view recently expressed in the *Justice of the Peace and Local Government Review*,[1] that a statutory tenant can only be got rid of on payment of compensation. It is there suggested that a statutory tenant has an " interest " in land which might be valued for the purpose of s. 121 at a higher figure. This suggestion appears to be based on what the writer submits is the fallacious argument that if s. 121 does not apply to a statutory tenant, there is no means of evicting him. It would also be impossible to value a statutory tenant's interest on the basis of willing seller and buyer, as now required by the Acquisition of Land (Assessment of Compensation) Act, 1919, since the " interest " is not capable of assignment. In the writer's view a statutory tenant has no interest in land and can be evicted under s. 91.

Where the compulsory purchase order is made under Acts such as the Housing Act, 1936, or the Town and Country Planning Act, 1947, there are certain statutory provisions which may expressly exclude the operation of the Rent Acts (s. 156 of the Act of 1936 and s. 30 of the Town and Country Planning Act, 1944, as incorporated with the Act of 1947). These provisions are, of course, necessary where land is acquired by agreement or appropriated to a new purpose or in certain circumstances where the land is not acquired at all, and their existence is no argument against the general contention of this article.

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[1] " Notes of the Week " (1951), 115 J. P. J. 466.

It might be added that there are discretionary powers for acquiring authorities to make payments for disturbance to persons displaced as a result of compulsory purchase in both the Housing Act, 1936 (s. 44), and the Town and Country Planning Act, 1944 (s. 30), as that Act survives for the purposes of the Act of 1947 and of the New Towns Act, 1946. These powers could be used in the case of statutory tenants, who had no legal right to compensation. There are also provisions of a general nature in regard to re-housing such as s. 137 of the Housing Act, 1936.

Tree Preservation Orders and the Forestry Act, 1951

By J. K. Boynton, M.C., LL.B., Solicitor

The Forestry Act, 1951, which comes into force on October 1, 1951, has made such sweeping changes in the system by which the Forestry Commission grant felling licences, that many ideas as to the value and usefulness of tree preservation orders require revision. Orders will still be needed, but, it appears, on a much reduced scale. This article deals first with some general points in connection with orders, and later with the provisions of the new Act as they affect the question of tree preservation orders.

Tree Preservation Order Procedure

The Town and Country Planning Act, 1947, deals with Tree Preservation in one section (s. 28), occupying a little over a page of the Act. The Regulations made under the section (Town and Country Planning (Tree Preservation Order) Regulations, 1950, SI 534 [1]) are about the same length, and are explained in Circular No. 85.[2] An Explanatory Memorandum [3] on the brief statutory provisions runs into some twenty-seven pages, with a model form of tree preservation order occupying a further five pages. There would be little point in attempting merely to explain the Explanatory Memorandum, and the first part of this article is, therefore, concerned rather to draw attention to some of the more important practical points which arise.

For those with only a superficial knowledge of the subject, it may be as well to point out that a tree preservation order has three main effects.

(a) Consent to fell must be obtained from the local planning authority.

(b) Replanting of a woodland area is normally obligatory.

(c) Compensation is, with several exceptions, payable by the local planning authority for refusal of consent to fell or for the granting of consent subject to conditions.

Orders can only be made where it is expedient in the interests of amenity.

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[1] *Encyclopædia of the Law of Planning, Compulsory Purchase and Compensation*, Vol. I, p. 1021.

[2] *Ibid* , Vol. I, p. 1433.

[3] *Ibid.*, Vol. I, p. 1315.

The terms of art.

It is important to realise that the words " trees ", " groups of trees " and " woodlands " are used in s. 28 and in the various regulations and circulars as definite terms of art. If there are sufficient trees to form a woodland, then replanting of trees in the woodland preserved by the Order will be obligatory after felling, and there will be no compensation payable by the local planning authority towards the cost. If there are only sufficient trees to amount to " a group of trees ", or to " trees " (*i.e.*, individual trees), then replanting can only be secured after felling if a condition to that effect is imposed by the local planning authority when granting consent to fell. Compensation will be payable for the replanting. There is a further less important difference to note between the three types. The Fourth Schedule to the Model Order only applies to trees and groups of trees. It does not apply to woodlands. Where trees or groups of trees appear in the Fourth Schedule, no compensation is payable by the local planning authority if they refuse to allow felling of the trees or groups of trees so specified.

There are also procedural differences between orders preserving woodlands and those preserving trees and groups of trees, which need no special comment. In particular the Model Form requires amending in several places according to whether the Order covers trees, groups of trees or woodlands. The Ministry will normally be prepared to supply a precedent showing these amendments, and no doubt most local planning authorities have already a copy on their files. It is important to realise, however, that the description of a small woodland by mistake as a group of trees will have certain practical consequences and is not of merely academic significance.

Particularly in view of the new Forestry Act, the parkland area method of designating scattered trees on the map is likely to be used frequently. This is described in para. 17 (d) of the Explanatory Memorandum.

Procedure in making the Order.

The summary of procedure at page 8 of the Ministry's Explanatory Memorandum is considerably amended by the Town and Country Planning (Tree Preservation Order) Regulations.[4] The present requirements are very briefly—

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[4] The summary of procedure in para. 24 of the Memorandum, s. 3 (ii), is in error in that it omits the requirement that a copy of the order be served—the section merely refers to the duty to serve a notice of the making of the order.

(1) The authority prepare and make the order.

(2) The authority submit to the Minister :—

Two sealed copies of the order (and maps)
Five unsealed copies (and maps)
Statement of reasons for making the order
Certificate that owners, etc., have been served as required by paragraph (3).

(3) The authority serve a copy of the order on owners and occupiers and, where known, on any other person entitled to fell any trees specified in the order or to surface-work minerals in the land affected by the order. It is at the discretion of the authority whether a copy of any map forming part of the order is also served on owners at this stage. Each owner must also receive notice of the making of the order and of his right of objection.

In the case of groups of trees or trees, no copy order is needed. It is sufficient merely to serve the notice of the making of the order, amplified to indicate briefly the effect of the order. A precedent is set out in the Appendix (*post*, p. 583). There is much to be said for making the statement of reasons available for public inspection, although there is no requirement as to this.

(4) On receipt of Minister's decision, the authority notify all persons served under para. (3), and if the order is confirmed, serve a copy of the order as confirmed upon them. A copy of any map included or referred to must be sent with the order.

(5) The authority secure registration of the order as a local land charge.

Consents to fell.

The method of application to the local planning authority, the power of that authority to grant consent unconditionally or otherwise, the right of an applicant to appeal to the Minister, and the need for the authority to keep a record of consents and refusals, follow the provisions applicable to normal planning applications so closely as to need little comment.

Selective felling.

The expression " selective felling [5] " is often used incorrectly in connection with applications to fell and needs explanation. It involves basically the retention of certain specified trees which can be relied upon to regenerate a woodland naturally. There is, therefore, no necessity to replant after a selective felling.[6] The type of tree retained and the soil and climatic conditions must both combine to make natural regeneration possible. Not every area of woodland can be dealt with by selective felling, but where conditions make it possible, compensation will usually be payable, as it is nearly always more expensive and involves deferment of the felling of some trees.

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[5] The expression is used with very different meanings by forestry experts.

Compensation.

To refer, briefly, to the question of compensation—this is payable to "any person who has suffered damage or has incurred expenditure" in consequence of any refusal of consent or any consent granted subject to conditions. A clear-cut case of "expenditure" (on young trees, fencing, etc.) would arise if replanting were required in the case of trees or groups of trees. (There is, of course, no compensation for the replanting of a *woodland* area.) A similarly clear case of "damage" would arise on an outright refusal of permission—assuming that compensation could not be avoided as mentioned below. Here the authority must, in effect, purchase the timber. Compensation might, however, be higher than the value of the woodland as standing timber, if, for example, a timber merchant had bought the trees and as a result of refusal had lost a profit. More difficult compensation questions may arise if felling is not permanently refused, but merely deferred. Clearly the minimum compensation must include a sum for the deferred realisation of the asset, plus something for the fact that the timber may at the end of the period be over-ripe and thus less valuable. Thus, if the timber were worth £1,000 and felling were deferred for ten years, one might take as a basic figure 3½ per cent. on £1,000 for the ten years, *i.e.*, £350. In fact, many other considerations might be relevant. For example, the sale of timber may be required to pay death duties, and other assets may not be readily saleable, except at a loss. The executors will be paying interest on the unpaid death duties and so forth. Add to this the fact that the prices of growing timber fluctuate greatly, and the difficulties of assessing compensation before the event are clear. Further, the authority can get nothing back if no loss eventually occurs because, for example, consent is ultimately granted where once it was refused, or if at the end of the period of deferment timber prices have appreciated, so that the delay results in a gain.

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[6] There is still an obligation to replant under the Order, but the Minister can be asked to relax this requirement. Para. 31 of the Explanatory Memorandum is incorrect on this point.

There are three main grounds upon which compensation can be avoided. The first is where the refusal of consent is in the interests of good forestry. The second is where the amenity value of the trees is so high that no right-minded person should consider felling them, and certainly should not be compensated for abstaining from what would amount to vandalism. The third is where the trees were not planted for profit but for ornament. The last case mainly arises in the case of trees or groups of trees, and the trees or groups of trees in question should be set out in the Fourth Schedule to the Order. The first two cases can arise in all types of Orders, and the procedure is to grant a certificate under para. 6 of the Order at the same time as the refusal of consent is issued. It is perhaps worth pointing out that a certificate may be granted where a woodland has an intrinsic amenity value as a woodland (para. 6 (c) of the Model Order), as well as when its amenity value arises not from its inherent natural beauty but from some external reason, *e.g.*, because it screens some disfigurement (para. 6 (e) of the Model Order).

Forestry Act, 1951

An attempt must now be made to assess the effects of the Forestry Act, 1951, upon tree preservation orders. These effects are extensive and far-reaching, and it would seem for the future that planning authorities are unlikely to make much use of orders for woodland areas, but rather to concentrate upon trees, groups of trees and parkland areas.

In the past, the bogey behind most tree preservation orders has been the question of compensation. With experience, orders have tended to be restricted to certain classes of case where something could be achieved even without expenditure by the local planning authority. For example, a planning authority would make an order preserving a woodland, knowing full well that it would only achieve replanting after felling. The making of an order has seemed to many a cumbersome means of achieving such a simple and desirable object, but in the past the Forestry Commission had no powers to insist upon replanting.

The Forestry Act, 1951, s. 3 (3), makes an order in such a case quite unnecessary because the Commission may now grant a licence subject to such conditions as, after consultation with the applicant, they may determine to be expedient for securing the restocking of the felled area. In short, a felling licence can carry a condition as to replanting. The Act goes much further than this, however, and establishes the principle that no felling of growing trees shall take place without a licence from the Forestry Commissioners. It is very much as if felling of trees had been made "development" under the Act of 1947. There are some further similarities between the machinery of control set up by the two Acts. As there are exceptional things under the 1947 Act which do not amount to development, so there are exceptional cases when felling needs no licence (s. 2 (2)). Felling licences can be granted conditionally or unconditionally, and applications are deemed to be refused if no decision is reached by the Commissioners within three months (s. 3). If a felling licence is refused, the applicant can appeal to a committee appointed by the appropriate Minister. In certain circumstances compensation will be payable by the Commissioners for the refusal of a licence (s. 7).

In the past the Commissioners have exercised their licensing powers mainly on silvicultural grounds, consulting the planning authority on questions of amenity. In future, the Commissioners may refuse a licence in the interests of good forestry or agriculture or *of the amenities of the district.* No doubt they will continue to seek the views of the local planning authority as to whether particular trees are considered to have amenity value.

Cases where Orders may still be needed.

In view of the stringent powers of control given to the Commissioners over tree felling, it seems certain that tree preservation orders will not be needed in the same numbers as they have been in the past. The main field where orders can do useful work would seem to lie in the cases where the Forestry Commissioners will have no jurisdiction, *i.e.*, the classes excepted by the Act (s. 2 (1)) or by regulations made thereunder.

There would be little point in paraphrasing the whole list of exceptions, but the following may be noticed :

(a) There is still a free limit, but it is expressed as a quarterly and not a monthly figure—825 cubic feet per quarter. This is a valuable concession in one way, as the same number of trees as before can be felled at one sweep, thus saving the expense of several bites at the cherry. Of this permitted total, however, only 150 cubic feet may be *sold* in any quarter unless the Commissioners permit a larger quantity in a particular case. The free limit is thus of little value to someone who wishes to sell timber either before or after felling.

(b) The felling of any fruit trees, or any trees standing or growing on land comprised in an orchard, garden or churchyard or open space needs no licence.

(c) No licence is required for the felling of trees of a diameter not exceeding three inches, or in the case of a coppice or underwood, of a diameter not exceeding six inches.

(d) The Act does not extend to trees within the administrative County of London.

Under para. (a) a tree preservation order might be useful if ornamental trees were being felled up to the free limit each quarter to provide timber for fencing or estate purposes, and under (b) an order could, for example, preserve scattered village trees growing in the gardens of houses or in hedgerows.

Effect of Tree Preservation Order under the Forestry Act, 1951.

S. 13 of the Forestry Act, 1951,[7] is designed to avoid any duality of control in cases where a tree preservation order is in force. Where a tree preservation order is in force and an application for felling is received by the Commissioners, there are two ways in which the matter may be dealt with :

(a) The Commissioners notify the local planning authority that they propose to grant a felling licence. If within the prescribed period the local planning authority object, the matter is referred to the Minister of Local Government and Planning. The procedure is similar to that for the reference of applications to the Minister in accordance with para. 15 (1), (2) and (3) of Sched. 3 to the Model Order. If the Minister grants consent, no licence is then required from the Commissioners.

(b) The Commissioners can pass the application to the local planning authority to deal with, and consent granted under the order will make any licence from the Commissioners unnecessary.

If the Commissioners propose to refuse the licence, they need not consult the planning authority.

It is worth noting that if the planning authority object to a felling licence being granted in case (a) or refuse it in case (b), compensation will fall to be determined *under the order* and will be payable by the planning authority and not by the Commissioners.

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[7] *Ante*, p. 539.

Under s. 7 the Commissioners may direct an owner to fell trees to prevent deterioration of the timber or to improve the growth of other trees. If the Commissioners proposed to give such a direction in the case of trees in a tree preservation order, they must notify the local planning authority, and if they object, " the Commissioners shall not give the directions except with the consent of the Minister of Local Government and Planning, who shall before deciding whether to grant or refuse to grant such consent, consult with the said authority ".

If a tree preservation order is confirmed after the grant of a felling licence, the effect is to cancel the licence. On the other hand, where an order is in force before a licence to fell is granted, then so far as the applicant is concerned, the grant of a licence is sufficient authority for the felling of trees in the licence (s. 13 (1)).

Conclusion.

It is difficult to see that tree preservations orders will in future often be required for woodlands in rural areas. Provided that the Commissioners have regard to amenity, and in general require the replanting of areas of natural beauty after felling, they can achieve all that tree preservation orders have usually achieved in the past. There would still seem to be some advantage in preserving isolated trees or groups of trees in villages or towns, and no doubt experience will produce other cases where amenity can be threatened by felling outside the control of the Commissioners under the Forestry Act, 1951.

APPENDIX

PRECEDENT OF NOTICE OF MAKING OF ORDER (TREES AND GROUPS OF TREES)

THE . . . COUNCIL

TOWN AND COUNTRY PLANNING ACT, 1947

NOTICE OF THE MAKING OF A TREE PRESERVATION ORDER

. . . (*Title of Order*)

To :— (owners, occupier, or other interested party)

1. The .... Council have made a Tree Preservation Order in respect of trees/groups of trees at
2. A certified copy of the Order, and the map included or referred to therein may be inspected between a.m. and

p.m. on Mondays to Friday and between a.m. and on Saturdays at:—

3. The Order has been submitted for confirmation by the .... Council to the Minister of Local Government and Planning, Whitehall, London, S.W.1. Objections or representations with reference to the Order may be made in writing to the Minister *within 28 days from the date of service of this notice.* Every objection or representation shall specify the particular trees or groups of trees in respect of which it is made and shall state the grounds thereof.

Note.—(The fourth paragraph is only necessary when a copy of the Order is not served on interested parties, and the fifth when a copy order is not served and trees or groups of trees are included in the Fourth Schedule.)

4. Briefly the effect of the Order is as follows:—
   (a) The consent of the .... Council must be obtained before any trees comprised in the order are felled, topped or lopped. No consent is required for the matters set out in the Second Schedule to the Order, *e.g.*, the cutting down of a dangerous tree. Appeal against the refusal of consent lies to the Minister of Local Government and Planning.
   (b) If the .... Council refuse to grant consent or grant consent subject to conditions, compensation may be claimed from them in respect of (i) damage suffered or (ii) expenditure incurred, as a result.
   (c) In certain cases set out in para. 6 of the Order the .... Council may grant a certificate when refusing consent to fell or imposing conditions, and no compensation will then be payable. A certificate may be given, *e.g.*, when the refusal or condition is in the interests of good forestry or when the trees have an outstanding amenity value. Appeal against the issue of a certificate lies to the Minister.

5. You are advised that trees/groups of trees of which you are the owner are included in the Fourth Schedule to the Order. If the Order is confirmed, no compensation will be payable in respect of the trees so included by the .... Council if consent to fell is refused or is granted subject to conditions.

DATED 195

Town Clerk/
Clerk of the Council.

Caravans in Relation to Planning Law

By Ronald P. Crompton, M.A. (Oxon), L.A.M.T.P.I.,
Deputy Town Clerk of the Borough of Middleton

The law relating to caravans has already received recognition in articles in these pages.[1] These have, however, dealt with specialised aspects of the subject and it appears the appropriate season, towards the end of a fleeting English summer, to summarise the general position.

Under the Town and Country Planning General Development Order and Development Charge Applications Regulations, 1950, Sched. I, Class V, it is permitted development for members of certain organisations to use land "other than buildings and not within the curtilage of a dwelling-house" for purposes of recreation or instruction and they are permitted to erect or place tents or caravans on the land for the purposes of that use.

Ministry of Health Circular No. 47 specifies the organisations as follows:—

1. British National Cadet Association.
2. Boy Scouts' Association.
3. Boys Brigade.
4. Girl Guides' Association.
5. Camping Club of Great Britain and Ireland.
6. Salvation Army.
7. National Council of Young Men's Christian Associations.
8. The Caravan Club of Great Britain and Ireland.

Other less favoured campers are permitted by Class IV to place caravans on land for a period of not more than twenty-eight days in total in any one year. The wording of the Order is as follows:—

> Class IV.—*Temporary buildings and uses.*
>
> The use of land (other than a building or the curtilage of a building or the site or curtilage of a building which has been demolished in consequence of war damage) for any purpose on not more than twenty-eight days in total in any calendar year, and the erection or placing of moveable structures on the land for the purposes of that use.

Regard should also be paid to s. 12 (5) (*b*) of the Act which reads as follows:—

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[1] [1949] J. P. L. 21, [1950] J. P. L. 401, [1951] J. P. L. 386.

> Notwithstanding anything in this section permission shall not be required under this part of this Act . . . in the case of land which, on the appointed day, is normally used for one purpose and is also used on occasions, whether at regular intervals or not, for any other purpose, in respect of the use of the land for that other purpose on similar occasions after the appointed day.

In short the position is this. If the occasional use has started before the appointed day no planning permission is required. Various organisations do not require planning permission, but the general rule is that other persons are only granted *as permitted development* the use of a site for twenty-eight days in any one year without permission.

The position at the end of twenty-eight days.

When the twenty-eight days have elapsed a rather difficult position arises. The camper has to decide whether to put in a planning application. It is by no means certain that there is any necessity for obtaining planning permission as each case must be judged on its merits to see whether there is a material change of use. Ministry of Town and Country Planning Circular No. 47, which was not taking into account permitted development, stated as follows:—

> "4. Clearly, not all camping is development. The placing of a single caravan in a 100 acre wood for one night does not involve a 'building, engineering, mining or other operation in on over or under land' and it is at least very doubtful whether it involves a 'material change in the use of land'. On the other hand the use of 100 tents or caravans in a single field for six months might very well involve a material change in the use of land. Planning authorities would not wish to control the former but ought to be able to control the latter."

It may not constitute development for a single caravan to remain on the site for more than twenty-eight days in a year; the test is whether such siting constitutes a material change of use. A conscientious camper will apply for planning permission or a determination under s. 17 and the case will be decided by the local planning authority or the Minister on an appeal; the less conscientious might await the enforcement notice and by the time the notice has expired and his case has been heard, his need for the site will probably have vanished until next year. He has no penal action to fear except possibly from the Central Land Board for a penalty for non-payment of a development charge.

The report of the Moveable Dwellings Conference 1947–49 is of interest:—

> "Misunderstanding has already arisen over the twenty-eight-day permission of Class IV, chiefly among the public. Two points should be emphasised. It sets a limit for the total use of the land, not for its use by any one person; and it is not a legal maximum for the user but rather a legal minimum for the local planning authority. That is to say, the test of when permission becomes necessary is still a 'material change of use' which in turn depends upon local circumstances. By setting a bottom limit in time, below which it is not necessary to apply for permission, the Order serves to remove uncertainty over a limited use which is sufficient to cover the reasonable temporary requirements of the public but not extensive enough to introduce serious risk to good planning. As soon as the twenty-eight days are exhausted, the planning authority may intervene if intervention is justified.
>
> In practice, it may be supposed, persons catering for moveable dwellings by way of business will apply for permission, while persons who do not seek this business but admit moveable dwellings casually when asked, will not. In the latter case, if there is development and it is objectionable and it comes to the notice of the local planning authority, the latter will issue an enforcement notice. If it is not objectionable, it may not come to their notice at all, or if it does they can tolerate it without condoning it, since if it tends to become permanent and thus objectionable, they have four years in which to stop it".

The location of the caravan.

The point has been raised on the exemption under Class IV of the General Development Order as to the location of the caravan. Has the caravan to remain on the few square feet on which it stands, must it remain within the same field and what is the determining factor to show that there has been a removal and that the twenty-eight-day period should start again? The licensing of caravans is controlled under s. 269 of the Public Health Act, 1936, and attention is called to the provisions of sub-s (8) (iii) of that section:—

> If a moveable dwelling is removed from the site on which it stands, but within forty-eight hours is brought back to the same site or to another site within one hundred yards thereof, then, for the

> purpose of reckoning any such period of forty-two consecutive days as is mentioned in sub-s. (2) or sub-s. (3) of this section, it shall be deemed not to have been removed or, as the case may be, to have been moved direct from the one site to the other.

The terms of the Public Health Act, 1936, are not applicable to town planning and no such guidance can be obtained from the Town and Country Planning Act, 1947, and in the absence of any such provision it is open to argument as to what is the intention of the Act. Regard must be paid to physical boundaries—the fencing of a field, the existence of streams and brooks. Each case must be considered on its merits to see whether there has been a removal in substance and not merely a change of position.

Miscellaneous points.

1. From information which has been received it appears that certain difficulty has been experienced where a refusal has been received for the siting of a large number of caravans and it is desired to apply for permission for a smaller number. Does the previous refusal bind a subsequent application? In effect there is nothing to prevent such an application and the provisions of art. 3 (2) of the General Development Order only refer to conditions imposed on a *planning approval* not to a *refusal.*

2. There is a clear distinction between planning control and control under s. 269 of the Public Health Act, 1936. This was brought out clearly in *Pilling* v. *Abergele U. D. C.* (1950), 1 P. & C. R. 42, where it was held that a local authority acting under the 1936 Act should not decide the case on planning grounds. Presumably the converse will apply.

3. An enforcement notice requires service on owner and occupier. Has a caravan dweller sufficient interest in the land to be deemed an occupier? The fact that there is a mere licence (not a tenancy) does not preclude occupation (see *Cory* v. *Bristow* (1877), 2 App. Cas. 262, and *Kittow* v. *Liskeard Union* (1874), L. R. 10 Q. B. 7). But caravans unlike fixed dwellings do not attach to the land; their exact position on the land may not be specified and their stay limited. Occupation is a question of fact. If the control of the land is sufficient to exclude the owner and all other persons then the caravan dweller is an occupier; otherwise not. In many circumstances it might be the safer and more practical course to accept the caravan dweller as an occupier and serve a notice on him under s. 23 of the 1947 Act.

Enforcement Proceedings in respect of War-Time Development

By Harold J. J. Brown, Barrister-at-Law

Many local planning authorities have no doubt hastened to serve enforcement notices in respect of unauthorised development which was already in existence on July 1, 1948, in view of the recent expiration of the periods in the proviso to s. 75 (1) of the Town and Country Planning Act, 1947, and in s. 4 (1) of the Building Restrictions (War-Time Contraventions) Act, 1946, which limit the power to take enforcement action. Certain aspects of the position of the local planning authority and landowner where such action has been taken have recently been discussed in this Journal.[1]

Where the development was instituted between September 3, 1939, and March 26, 1946, the " war period " under the Act of 1946, the provisions of that Act have to be read together with the relevant provisions of the Act of 1947, and in certain respects the legal position is rather obscure. That position will depend upon whether or not the local planning authority have made, on an application submitted before March 26, 1951,[2] a determination under s. 2 of the Act of 1946 that the development complies, or does not comply, with planning control; and whether, following a determination so made that the development does not so comply the local planning authority have made a determination under the same section that the development shall be deemed to comply, or not to comply, with planning control; whilst the position where a determination of deemed compliance has been made subject to conditions calls for special consideration. These various alternatives may be considered in turn.

1. Where no determination has been made under s. 2.

Where works were carried out or a use commenced during the war period, and no determination has been made under

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[1] [1951] J. P. L. 318, 399, 402.

[2] This date—five years from the end of the " war period "—must be extended where planning control has been unenforceable by reason of occupation by or on behalf of the Crown—see s. 7 (6) of the Act of 1946.

s. 2 of the Act of 1946, and no enforcement proceedings commenced (by service of an enforcement notice or request for an application for planning permission to be made, or otherwise) before March 26, 1951,[3] it is clear that by s. 4 (1) of the Act the development is to be treated for all purposes as complying with planning control. Accordingly, s. 75 of the Act of 1947 does not apply by virtue of para. (*a*) of sub-s. (2) of that section, and it will be possible successfully to resist any attempt to take enforcement proceedings.

If an owner is (after March 26, 1951 [3]) requested by the local planning authority to submit an application for planning permission in respect of such development—as has been done in a number of cases by at least one authority—the owner should, it is submitted, politely but firmly decline the invitation—unless and until an enforcement notice is served, when an application for planning permission may be submitted "without prejudice to the contention of the applicant that planning permission is not required", and an appeal against the notice under s. 23 (3) of the Act may be lodged with the Court of summary jurisdiction, and, indeed, should be so lodged without delay—see *Perrins* v. *Perrins* (1951), 1 P. & C. R. 457.

2 & 3. Where a determination has been made that the development complies with planning control or that it shall be deemed to comply therewith.

Where a determination has been made under s. 2 of the Act of 1946 either that the development complies with planning control, or that it does not comply but shall be deemed to comply, s. 75 of the Act of 1947 does not apply by virtue of para. (*a*) of s. 75 (2), and no enforcement action is possible thereafter.

4. Where a determination has been made that the development fails to comply with planning control, and further, that it shall not be deemed so to comply.

Where a determination has been made under s. 2 of the Act of 1946 that war-time development fails to comply with planning control, and the further determination required to be made under s. 2 (3) is that the development shall not be deemed so to comply, then enforcement action can be taken by the local planning authority under ss. 23–24 as applied by s. 75 (1) of the Act of 1947; and since the proviso to s. 75 (1) will not apply, such action may be taken at any time in the future unless the period of four years from the carrying out of the development specified in s. 23 applies.

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[3] See note 2 above.

It seems probable from the decision in *Higham* v. *Havant and Waterloo U. D. C.* (1950), 1 P. & C. R. 281 (see the judgment of Parker, J., at p. 286) that the Divisional Court would be inclined to hold that the four-year limitation does not apply in such a case, on the grounds that if it should apply it would mean that any development carried out before July 1, 1944, could never have been subject to enforcement proceedings notwithstanding that the 1946 Act gave local authorities power to determine that development carried out at any time between September 3, 1939, and March 26, 1946, does not comply with planning control. However, this point was not decided in *Higham's Case*, the development in that case not being " war-time development ", and the decision being that the proviso to s. 75 (1) applied, and that the three-year period therein was in substitution for the four-year period in s. 23. But as has already been suggested in this Journal (*ante*, p. 399) it might be held by the Court, and the indications in *Higham's Case* are that it would be so held, that where there has been a 1946 Act determination neither the three-year period in s. 75 (1) nor the four-year limitation in s. 23 will have any application, and in that event the enforcement proceedings may be taken at any time in the future.

On the other hand, although the Courts would no doubt seek to interpret the provisions so that the four-year period did not operate, on the wording of s. 75 and s. 23 there is a strong argument that it must apply in these circumstances. In *Higham's Case* the Court were able to hold that the words " subject to the provisions of this section " in s. 75 (1) could be read together with the proviso to that sub-section to mean that the three-year limit in the proviso was in substitution for and not in addition to the four-year limitation in s. 23. But in a case of " war-time development " the proviso to s. 75 (1) does not apply, and this argument is not available.

S. 23 (1) as amended by the Act of 1951 provides for two cases :—

(1) Where development " has been carried out after the appointed day without the grant of permission . . . ".

(2) Where " any conditions subject to which such permission was granted in respect of any development have not been complied with . . .".

An enforcement notice may be served in respect of case (1)

" within four years of such development *being carried out* ", and in respect of case (2) " within four years after the date of the alleged failure to comply " with the condition.

S. 75 (1) applies the provisions of s. 23 " *as they apply in relation to development carried out after the appointed day without the grant of permission* . . . ", and since this refers to the first alternative in s. 23 (1) it would appear that an enforcement notice may be served under s. 75 (1) only within four years of the development being carried out. On a strict interpretation of the wording it is difficult to see how this limitation can be said not to apply, but until the point has been decided by the Courts, the question must remain one of considerable doubt.

By virtue of para. (*b*) of s. 75 (2), the proviso to s. 23 (3) must be omitted in applying s. 23 in a case where there has been an adverse determination under the 1946 Act, and, accordingly, the enforcement notice will take effect notwithstanding that an application for planning permission or an appeal to the Court is made. The right to appeal to the Court under sub-ss. (4) and (5) of s. 23 (with the substitution of para. (*a*) of sub-s. (4) required by s. 75 (5)) is, however, not abrogated.

5. Where a conditional determination has been made under the 1946 Act.

If a conditional determination under the Act of 1946 was made prior to July 1, 1948, the condition may be enforced under s. 76 of the Act of 1947, for in such case the provisions of that section relating to the enforcement of conditions imposed before that date under a planning scheme or an interim development order are applied by s. 76 (5), and s. 75 is expressly excluded. Where, however, a conditional determination under the Act of 1946 has been made after July 1, 1948—for instance, a determination made in 1949 that a use which was commenced in 1944, shall be deemed to comply with planning control subject to the condition that it is continued only for a stated period of years and then shall be discontinued —there are further difficult questions of interpretation.

The view has recently been expressed in this Journal [4] that if development is deemed to comply with planning control subject to conditions as a result of a 1946 Act determination, it follows that s. 76 (1) of the Act of 1947 applies. Some support for this view indeed follows from s. 7 (3) of the Act of 1946, which requires references in that Act to compliance with planning control to be construed by reference to whether or not the development was commenced in conformity with the terms of either an operative planning scheme or an interim development order or permission granted thereunder, for it may be argued that the determination of deemed compliance is to be construed as a determination that the development shall be deemed to have been instituted in conformity with the provisions of any 1932 Act scheme or interim development order, and if this is so, it appears that the condition would be enforceable under s. 76 (1). But it is by no means certain that this is a correct interpretation. S. 7 (3) of the Act of 1946 does not provide, at any rate in express terms, for the case of a conditional compliance with planning control. Further, if this view is correct, it applies equally where such a determination under the 1946 Act was made before July 1, 1948, and since it would follow that s. 76 (5) would be redundant this is an indication that this interpretation is not the one which the legislature had in mind. Again, in the absence of authority, it is not possible to express a definite opinion.

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[4] See the final paragraph of the letter from Mr. W. A. Leach, *ante*, p. 484.

If s. 76 (1) does apply, the local planning authority clearly may take enforcement proceedings in respect of any breach of the condition within four years from any alleged failure to comply with it. If it does not apply it is necessary to consider the application of s. 23 by virtue of s. 75 of the Act of 1947. S. 75 (2) provides in paras. (*a*) and (*b*) for the respective cases where there has been a determination under the 1946 Act that development shall be deemed to comply or not to comply with planning control, but does not expressly provide for the case where there has been a conditional determination. It could be argued that such a determination fell within para. (*a*) of s. 75 (2) and, accordingly, that s. 75 (1) was excluded and enforcement action could not be taken. But this would be to negative the condition, and the express authorisation of such a condition by s. 2 (3) of the Act of 1946 would no doubt lead a Court, in construing these provisions, to endeavour to give effect to such a condition if at all possible to do so. If the development continued after the stated period there would be a breach of the condition and it might well be that a Court would hold that as a result of such breach the determination that the development was deemed to comply with planning control had ceased to have effect; and s. 75 (1), being no longer excluded by para. (*a*) of s. 75 (2), would then apply.

The question whether the four-year limitation in s. 23 would apply, which has been referred to above under head 4, then arises, and unless it were held that it did apply, the local authority could proceed with the enforcement action against the contravening development.

Even if it were held that this four-year limit did apply, and the possibility of enforcement action in respect of the development itself were thereby excluded, there would still be the possibility that the Court might give effect to the condition, for normally (*i.e.*, apart from its application by s. 75 to pre-appointed day development) s. 23 (1) applies also where " any conditions subject to which permission was granted (after July 1, 1948) . . . have not been complied with ", and in such case the sub-section as amended by the Town and Country Planning (Amendment) Act, 1951, allows enforcement action to be taken within four years of the alleged failure to comply with the condition. Section 75 (1), however, does not refer to enforcement of conditions, and as indicated above, the enforcement provisions of the Act (ss. 23, 24) are, in relation to development instituted before July 1, 1948, which was begun in contravention of previous planning control as defined by s. 75 (9), applied " . . . *as they apply in relation to development carried out after the appointed day without the grant of permission* . . . ". This wording refers only to the first alternative under the amended s. 23 (1), and not to the second alternative (in respect of conditions not complied with), and hence, in a case where the condition was imposed before July 1, 1948, it appears to exclude the application of the provision allowing enforcement action to be taken within four years of alleged non-compliance with the condition.

In this case also, the Court would no doubt wish to give effect to the condition by applying the enforcement provisions of the Act of 1947 in relation thereto, and the possibility that they would interpret the language of the Act so to do cannot be ruled out. But it is submitted that in this instance, on a true construction of the statutory provisions, if the development commenced more than four years previously the condition should be held to be unenforceable.

Development in Barsetshire

Refusal Value of the Hogglestock Fairground

The following conversation may be supposed to take place between S., a surveyor acting for a developing owner, and D.V., a district valuer, during an informal discussion on development charge.

D.V. In this case you have got planning permission to use 1½ acres adjoining the Hogglestock Super Majestic Cinema as a car park.

S. Yes. We have had complaints from the police about patrons parking in the street, often without lights and in any case causing congestion. There is not much benefit to us since the charge for parking a car will only be 6d., and that will be refunded if a seat is bought for the cinema performance, on surrendering the counterfoil of the car park ticket.

D.V. Nevertheless the car park is a useful adjunct to the cinema, and I was at first inclined to use the " Before and After " method of Valuation (PRACTICE NOTES, para. 40). In the absence of any precise data concerning this particular case, however, I thought it better to rely on my knowledge of comparable rents and purchase prices for other car-parking land in the town.

S. The other transactions are hardly comparable, are they? I suppose you are going to mention the price paid for the greyhound track car park, but I should like to point out that they charge 2s. 6d. for parking and make no refund.

D.V. I was going to refer to it, and whilst it is true that the charge is higher that park is used only twice a week for one meeting on each occasion, whereas your park will be used seven days a week, and probably each day on more than one occasion. There will be different people for the first and second houses as well as casual parking during the day by business men.

S. But don't forget that we shall refund the parking charge to cinema patrons.

D.V. There is nothing in the planning permission compelling you to do that. After you've been open a week you might decide to charge 1s. *and* keep it.

S. What are your figures?

D.V. I put the Consent Value at £1,000 an acre, or £1,500 in all, and the Refusal Value at £200 an acre, equals £300.

S. I am not going to challenge your Consent Value seriously, but I'm astounded at your Refusal Value. How on earth do you get at it?

D.V. I've conceded that you might use it as allotments. Say you get 1s. a rod rent, that is £8 an acre which at twenty-five years' purchase is equal to £200. I've been generous and deducted nothing for outgoings, collection and the like.

S. My Refusal Value is £2,700.

D.V. Now it is my turn to ask "How on earth do you get that?".

S. Up to now the land has been let to fairs several times each year. It is let for £25 a day, on at least seven days a year, a total income of not less than £175 p.a. Calling it £150 p.a. to allow for expenses, which are actually negligible, and applying eighteen years' purchase gives my £2,700. Obviously the Development Charge should be nil since your Consent Value is only £1,500.

D.V. I don't think I can allow such a use within the Refusal Value.

S. If you will refer to para. 56 of the PRACTICE NOTES the basis for Refusal Value is clearly laid down, *viz.*:

1. any relevant operations or uses which are not in law (s. 12) "development" would be permitted to the owner (Notes III and IV);
2. any operations or uses which are mentioned in the Third Schedule (or s. 112) and are available to the owner of the land, in its condition when application for planning permission is made, would be permitted to the owner (Note V);
3. any operations or uses which are exempted in the Development Charge Exemptions Regulations (SI 1948, No. 1188) and are available to the owner of the land, in its condition when application for planning permission is made, would be permitted to the owner (Note VI);
4. all other operations and uses are permanently prohibited. No probability or even remote possibility of any such operations or uses being permitted must be reflected in Refusal Value.

Now in my case I come within 1, because this fairground use was in existence on the appointed day, hence I am within s. 12 (5) (*b*) and no development is involved. Nor am I restricted to the twenty-eight days " temporary use " exempted by the Regulations (now, of course, SI 1950, No. 1233, Class 7).

D.V. I am coming to that. By virtue of the General Development Order (SI 1950, No. 728, Class IV, 2) you can use *any* land for this Fairground purpose for not more than twenty-eight days, and under the Exemption Regulations it is free from Development Charge. Now you own other suitable land where you can hold Fairs, after you have turned this particular land in question into a cinema car park. If I allowed you the fairground value in calculating the Development Charge you would be getting it twice over.

S. I can only refer you to the definition of Refusal Value. I must stress that it envisages no development being allowed other than the tolerances and that exempted from charge. That being so, within the definition of Refusal Value our original use would continue—obviously it is the best site for such a purpose since the fairs have been coming here regularly for many years. Equally a purchaser of the land at Refusal Value would take into account this element. If you disagree I must ask you to refer the case to Somerset House.

(*Silence for some minutes whilst the D.V. buries himself in Practice Notes.*)

D.V. I think you are right. Whilst I don't agree entirely with the figures you have used in calculating the Refusal Value I agree with your principle and I can now make the Development Charge " Nil ".

Progress of Development Plans

(Continued from p. 537, ante)

The following is a continuation of the list of plans submitted to date (September 18, 1951). Any objections should be sent to the Secretary, Ministry of Local Government and Planning, Whitehall, London, S.W.1, before the closing date indicated.

33. Merionethshire County Council.
Submitted to Minister: August 29, 1951.
Closing date for objections: October 20, 1951.

34. St. Helens County Borough Council.
Submitted to Minister: August 30, 1951.
(London Gazette, September 7, 1951.)
Closing date for objections: October 28, 1951.

35. Burnley County Borough Council.
Submitted to Minister: August 31, 1951.
(London Gazette, September 7, 1951.)
Closing date for objections: October 15, 1951.

Lancashire County Council.

The development plan for the county of Lancaster is to be submitted to the county planning committee in October, and to the county council in November, 1951, and will then be submitted to the Minister.

Statutory Instruments

The Lake District Planning Board Order, 1951

(SI 1951, No. 1491, August 13, 1951)

The Peak Park Planning Board Order, 1951

(SI 1951, No. 1533, August 20, 1951)

[*Summarised*]

These two orders respectively provide for joint planning boards to be constituted as the local planning authorities for the areas of the Lake District and Peak National Parks. In each case, two-thirds of the members will be appointed by the constituent authorities, and one-third nominated by the Minister after consultation with the National Parks Commission.

The net expenditure by the joint boards is to be apportioned by the boards, and shared among the constituent authorities—equally in the case of the Lake District Board and in specified proportions in the case of the Peak Board.

The orders also contain other financial provisions, powers to appoint staff, and provisions for the boards to take over applications for planning permission which have already been made in respect of land in the areas.

Parliamentary Intelligence

Replies to Questions in the House of Commons

Development Charges—Schools

In a written reply to Mr. J. Morrison, the Minister of Local Government and Planning (Mr. Dalton) stated that up to June 30 about £110,000 had been paid as development charges on schools and similar buildings. (August 1, 1951. H.C. Debates, Vol. 490, col. *339*.)

Ministerial Information and Circulars

The Drafting of Planning Permissions

The following memorandum has been circulated to local authorities, attached to Ministry Circular No. 58/51, dated September 10, 1951:

1. The Town and Country Planning Act, 1947, has had a far reaching effect on land tenure, and one result is that the planning permission is now much more important than under the previous planning system. The permission is not the personal property of the applicant : unless otherwise provided it runs with the land, and is thus a matter of concern to any prospective purchaser or tenant; it is required to be valued by the Central Land Board for the purpose of assessing development charge, and it may have to be interpreted by the Courts. It follows that permissions should be so framed that persons other than the local planning authority and the applicant may be able to appreciate exactly what has been authorised and to assess its effect on the value of the land.

Relation to the terms of the application.

2. A common source of confusion is the granting of permission in the terms used in the application, without consideration of whether the development has been adequately described. Applicants are seldom expert in planning and cannot be expected always to appreciate what is significant for this purpose. The proposed development may be wrongly described, or the description may be incomplete. For example, it often happens that permission is sought to make alterations to a building which are required in connection with some change of use, but not for the change of use itself. Where the application submitted is obscure it is advisable for the local planning authority to ascertain from the applicant precisely what is intended, have the application altered where necessary, and then frame the permission in appropriate terms. This precaution will also ensure that the entries in the statutory register of applications are readily intelligible to all who consult it.

Should use be specified?

3. In view of s. 18 (3) it is not necessary, when granting permission for the erection of a building, to specify the use to which it is to be put, since the permission will be construed as including permission to use the building for the purpose for which it is designed. But if there is any room for doubt, it is better that the permission should be specific; many modern buildings can be used with only slight adaptation for a variety of purposes. Permissions may be expressed either in terms of the use to be carried on or in terms of the relevant class in the Town and Country Planning (Use Classes) Order, 1950; or, if the applicant desires it, permission may be granted in a form which allows free interchange between uses in two or more classes.

4. Where permission is granted to erect a building, the extent of the surrounding land to be used with the building should be defined, if possible, so as to avoid disputes about the valuation of the permission and the application of the classes of permitted development. Normally this will be the area shown on the site plan accompanying the application, and it will be sufficient to grant permission in the usual way for the development to be carried out in accordance with the plans submitted.

The outline application.

5. The subject of permission granted in outline form has been dealt with in detail in Circular 87, but there are two points which should be mentioned. Applications for planning permission are often made in terms of using land for such and such purposes where it is clear that what is intended will involve the erection of buildings. In some cases it will be found that the applicant has no firm development proposals in mind, and that the " application " is really an inquiry as to what kind of development would be permitted; if so, it should be treated as such. Where the application is genuinely one for planning permission to erect buildings any permission granted should be framed in terms of building operations, because " use " is defined in the Act to exclude the development of land by building, and consequently a permission to " use land " would not by itself authorise the erection of buildings. Particular difficulty arises where permission is sought to " use land for industrial purposes ", because under s. 14 (4) of the Act an application for permission to erect industrial buildings cannot, subject to certain exceptions, be

made without a supporting certificate from the Board of Trade. It is suggested that where an application of this sort is received, the local planning authority should explain to the applicant the limitations of a permission to " use land " and ask whether he proposes to erect buildings, at the same time explaining the effect of s. 14 (4). His reply should make it possible for the authority to decide whether the application should be treated as an informal inquiry, turned away for lack of a certificate, or altered by the applicant so that it relates only to the erection of buildings for which no certificate is required.

6. The second point which it is desired to stress is that care must be taken, when granting permission on an outline application, to provide specifically for any matters which it is desired to reserve for subsequent approval; an unqualified permission to erect a building would almost always have to be construed as including permission for any other development (*e.g.*, the formation of an access) which was essential to its use.

The personal permission.

7. The general rule, as set out in s. 18 (4), is that the grant of permission shall enure for the benefit of the land and of all persons for the time being interested therein; but, exceptionally, it may be in the interests of good planning to confine the benefit of a permission to a particular developer, and the words in the sub-section " except as may be otherwise provided by the permission " recognise that this can be done. Planning is, however, concerned with the use of land rather than with the persons who use it, and it cannot be emphasised too strongly that permissions restricted in this way—personal permissions as they are sometimes called—are only justified in very special circumstances.

8. It is not easy to define the circumstances in which personal permissions can justifiably be used, but there is a double eliminating test which may be applied. The use of such a permission should not be contemplated unless it is quite clear, first that the reason for imposing the restriction is a planning reason, and second, that there is no other means by which the desired result can be achieved. Thus a permission should not be restricted to a specified person as an alternative to defining the use to which the premises are to be put, except perhaps in the very rare case where the proposed use is peculiar to the applicant. Again, where it is desired to avoid the perpetuation of a use allowed on hardship grounds, the better course may be

to grant permission for a limited period only. On the other hand, a personal permission might be justified in a case where the exceptional quality of a building made it essential to ensure that its occupation remained in responsible hands.

9. Not only is it important to limit strictly the use of the personal permission: its terms also require particular care. A personal permission is in effect a permission for an indeterminate period; when a new use is instituted under the authority of such a permission the old use has been changed; but a permission of this type does not attract s. 18 (5) of the Act and there is no provision in the Act to authorise the resumption of the previous use when the permission expires. Provision should therefore be made for this in the permission itself. The peculiar character of personal permissions makes it important that there should be no doubt whether a particular permission is limited in this way: for this reason it is better not to mention the applicant by name in an ordinary permission. The following form of permission is suggested as illustrating the principles involved:—

> "The Council hereby grant permission for the use of No. 1 Blind Alley as . . . such permission to operate for the benefit of the [present applicants] only, and on the discontinuance of such use the Council hereby grant permission for the use of the said premises as a [private residence] to be resumed."

Conditions should be kept to the minimum.

10. When granting permission, local planning authorities may do so either unconditionally or subject to such conditions as they think fit. It is this process of deciding what conditions (if any) are appropriate and then expressing them in suitable terms which gives rise to most of the difficulties met with in the framing of planning permissions. It is obviously preferable that wherever possible permission should be granted with the minimum of qualification: the attempt to guard against every possible contingency and regulate every trifle is not only a sign of fussy and over-anxious administration but frequently defeats its own ends. Conditions ought, therefore, only to be imposed where there is some definite and important end to be secured. Above all the automatic attachment of conditions to every permission should be avoided, since conditions imposed automatically are bound to be either superfluous or inappropriate in many cases. This criticism applies with particular force to standard conditions which are printed on the

form of permission. It is not, of course, meant to suggest that local planning authorities should not standardise the wording of different types of conditions for use as appropriate.

Conditions—the test of enforcement.

11. One general rule is that conditions to be satisfactory must be capable of enforcement; this means not only that they should be clear and precise in expression, but that they should be couched in such a form that the Council will be able to take effective action if they are not observed. Vague expressions such as " maintain the land in a tidy state ", or " so as not to cause annoyance to nearby residents ", have obvious weaknesses. Moreover, conditions should not be made subject to qualifications such as " if called upon to do so " or " if the growth of traffic makes it desirable ", which leave the basic question of whether the condition is to apply to be settled at a later date. Even when a condition is clear and precise, it may still fail in its purpose because the authority would have no power to impose an adequate sanction if it were not complied with. The extent of what can be required by an enforcement notice is defined by s. 23 (2), and it will often be found useful to test the worth of a condition by examining it in the light of this sub-section. For example, if a developer, who has secured permission to erect a building subject to a condition that " the plans shall be submitted for the approval of the local planning authority ", pushes ahead at once with his building, it may well be that an enforcement notice could do no more than require the submission of the plans; the real requirement, that the plans shall be approved before any development is undertaken, has not been made clear in the condition.

Conditions should be " planning " conditions.

12. Although the power given to local planning authorities to grant permission " subject to such conditions as they think fit " is not expressly qualified in the Act, there are none the less certain limitations which should be observed. The Town and Country Planning Act is an Act for regulating the development and use of land; and the powers which it confers are only available for those purposes. Conditions which have no relevance to planning have no place in a planning permission: planning powers ought not be used as a sort of universal longstop when other powers are not available. Moreover, it will often be found that matters which are of proper concern to

planning are already regulated either by statute or common law. In such cases it is generally undesirable to seek to cover the same ground by attaching conditions to a planning permission. The existence of the condition will not free the developer from his other responsibilities; if the requirements are the same the condition is unnecessary, while, if they conflict, confusion will result. Exceptionally there may be circumstances which make it desirable to supplement a specific control (*e.g.*, where the relevant legislation is out-of-date, or where preventive action is preferable to reliance on the statutory remedy). But, in general, the powers of the Planning Act ought not to be used to duplicate or alter the impact of more specific legislation, particularly if the result would be to deprive the developer of compensation to which he would otherwise have been entitled. Further, the enforcement machinery provided by the particular legislation will generally be better suited to the purpose for which it was specifically designed than the enforcement procedure of the 1947 Act, which was framed to deal primarily with contravening development.

Improper conditions.

13. It is a general principle that no payment of money or other consideration can be required when granting a statutory consent except where there is specific authority. Conditions requiring, for example, the cession of land for road improvement or for open space should not therefore be attached to planning permissions. Furthermore, local planning authorities are not authorised to delegate their powers and duties except in pursuance of s. 34. Conditions which leave the extent of the obligation imposed by them to be decided by a third party should therefore be avoided.

Special types of condition.

14. The general powers of local planning authorities to impose conditions are extended by s. 14 (2) in two particulars. Para. (*a*) makes it possible to impose conditions affecting land which, although not covered by the application, is under the control of the applicant. Such conditions may regulate the development or use of the land concerned or may provide for the carrying out of works on it, but only so far as appears to the local planning authority to be expedient for the purposes of, or in connection with, the development authorised by the permission. This limitation is important; there must be a

definite link between the object of the condition and the development permitted, and for this reason the scope of the power is generally limited to land adjacent to that which is the subject of the permission. This type of condition should not be employed merely because it is considered desirable on general planning grounds to restrict the use of some other land which happens to be under the control of the applicant; in cases of this sort action should be taken under s. 26 and the appropriate compensation paid. Para. (*b*) enables a local planning authority to grant permission subject to a condition requiring the removal of any buildings or works, or the discontinuance of a use, at the end of a specified period. To be within the wording of the paragraph the condition must define the period of the permission, and expressions such as " six months or such longer period as the Council may allow " or " the use shall be discontinued on three months notice from the Council " should not therefore be used. If it is desired to remind the applicant that no compensation will be payable in respect of the discontinuance, or that the period of the permission may be extended if a subsequent application is made, this should be done in a covering letter and not in the permission itself.

Restrictions at the applicant's own request.

15. Local planning authorities are sometimes asked by applicants to restrict a permission for the purpose of reducing their liability to development charge. In some cases what is requested is the limiting of a permission to the period of the applicant's interest in the land; while in others the applicant seeks to have restrictions placed on the use permitted (*e.g.*, by excluding the remainder of a use class).

16. It is the duty of local planning authorities in dealing with applications to be guided by planning considerations : they are concerned with regulating the use of land, and the permission which they grant enures for the benefit of the land. Consequently if, in their view as the planning authority, the restriction suggested is undesirable, they should unquestionably reject it : it would for example be absurd to qualify a permission for the erection of a substantial permanent building with a condition requiring its removal at the end of a short term of years merely to reduce the development charge payable. On the other hand it will often be found that a restriction which was suggested to lessen the amount of development charge payable can be justified on planning grounds : restrictions on the use of

village halls and social centres are obvious examples. It is not possible to lay down hard and fast rules and cases must be considered on their merits; but it should be remembered that one result of imposing artificial conditions must be to increase the number of unnecessary applications to planning authorities.

Time limits on the validity of permissions.

17. Conditions have been widely used to limit the period within which a permission may be acted on and so enable the local planning authority to review the situation if the development is not commenced, or completed, within a specified period. The advantage which may be claimed for conditions of this type is that they make easier any subsequent changes in the planning proposals for the area concerned without recourse to formal revocation or modification of the permission.

18. The main effect of a condition providing that the development covered by the permission shall be commenced by a given date (whether or not the permission is expressed to be void thereafter) is that, if the condition is not complied with and a fresh permission is refused—and there is no point in the condition unless there is a likelihood of refusal—the developer will be deprived of the compensation for abortive expenditure to which he would be entitled under the statutory procedure of s. 21. This might not be unreasonable if the delay were always due to the developer himself; but developers frequently need to lay their plans well ahead and many factors may (particularly under present conditions) falsify their expectations. A condition in this form should, therefore, only be used where there is special reason to believe that the planning proposals for an area will need substantial revision, but the degree of risk is not sufficient to justify outright refusal: and the local planning authority should always be prepared to show cause both for the use of the condition and the particular period chosen. The more extreme form of the condition—that requiring that the development shall be *completed* within a fixed period—should never be used. Otherwise, the owner of a half completed building may find himself, through no fault of his own, not only deprived of the right to complete it, but also unable to claim compensation under s. 22.

Central Land Board Practice

Renewal of Temporary Permission

In August, 1950, we noted [1] that the Central Land Board had decided that where a temporary planning permission for a use which had been granted prior to July 1, 1948, expires, and planning permission for continuance of the use is granted, such continuance is exempt from development charge on the first and any subsequent renewal.

It appears from the Board's report for 1950–1951,[2] to which we referred last month, that the Board have decided that such exemption from development charge will apply not only to continuance of a use but also, in corresponding circumstances, to retention of a building.

Notes of Cases*

COURT OF APPEAL

Application to Quash Compulsory Purchase Order

Hanily v. Minister of Local Government and Planning (July 30, 1951). The applicant had applied to the High Court by notice of motion under R. S. C., Ord. 55B, r. 71 (7) to have quashed, on certain stated grounds, a compulsory purchase order which purported to have been made under s. 43 (2) of the Town and Country Planning Act, 1947. This application had been made within the period of six weeks from publication of the notice that the order had been made, specified by Sched. I, Part IV, para. 15 to the Acquisition of Land (Authorisation Procedure) Act, 1946. Subsequently, after the expiration of the six weeks' period, the applicant applied under R. S. C., Ord. 28, r. 1, to amend her notice of motion by stating an additional or alternative ground.

The Court (Cohen and Singleton, L.JJ.) held that the amendment did not disclose a new cause of action and could be permitted notwithstanding that the period of six weeks had expired before the application to amend had been made.

Appeal from decision of Ormerod, J., allowed.

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[1] [1950] J. P. L. 602.

[2] Para. 14. For further particulars of the report, see *ante*, p. 545.

* Full reports of these cases will be published in *Planning and Compensation Reports.*

Lands Tribunal Decisions*

British Electricity Authority v. Cardiff Corporation (August 20, 1951). This was a claim for compensation in respect of the compulsory acquisition of the leasehold interest in a large double-fronted detached house in Cardiff, of three floors, floor space 4,246 sq. ft. excluding passages and staircases, with war-damaged coach house and stable and tiled yard, standing in a total area of about 1,300 sq. yds. The interest was a term of ninety-nine years from March 25, 1944, at a ground rent of £40 per annum. Notice to treat was, by agreement deemed to have been served on April 1, 1949, the date when the acquiring authority entered into occupation. The Corporation had subsequently purchased the freehold reversion for £1,200.

The house had originally been used as a dwelling-house, but in 1945 the leasehold interest had been purchased for £3,000 and the premises used as a private hotel. In 1947 the Corporation had considered buying the property for welfare purposes and had paid £5 to secure an option to purchase it for £11,000, but this had not been exercised. In 1948 the British Electricity Authority had acquired the unexpired term of the lease for £7,000, and had used the house as offices although permission for that use under Defence Reg. 68CA had been refused. The use on both July 1, 1948, and April 1, 1949, was as offices.

The Tribunal (CECIL H. BAILEY, ESQ., B.SC., M.I.C.E., F.R.I.C.S.) held that as the office use was illegal it could not be taken into account. The change of use from dwelling-house to private hotel in 1945 had taken place without interim development permission, but having regard to the fact that the Corporation were now using the premises for welfare purposes and to the uses of neighbouring houses the possibility that an enforcement notice would have been served in respect of the hotel use was a very remote one. The valuation should therefore be on the basis that the premises were a private hotel, and having regard to the transactions which had taken place in respect of the property, its value, which would be similar if assessed on the basis of use as a dwelling-house, was assessed at £6,250, and this was the compensation payable.

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* Full reports of these cases will appear in *Planning and Compensation Reports.*

Executors of H. W. Arliss, decd. v. London County Council (August 23, 1951). This was a claim for compensation upon the compulsory acquisition of a dwelling house in Stepney. From 1936 the house had been let at a rental of 21s. per week inclusive of rates, increased in 1938 to 22s. 6d., to a tenant who had sub-let the upper part at 11s. per week, increased in 1938 to 12s. In May, 1941, the house had sustained severe war-damage and since May, 1942, had not been occupied. From 1943 to 1949 the house had been requisitioned by the Stepney Borough Council for housing purposes. In February, 1950, the owner had served a purchase notice on the London County Council following a refusal by that Council to permit repair of the war damage, and notice to treat was deemed to be served on the date of confirmation of the notice, June 28, 1950.

The Tribunal (JAMES L. MILNE, ESQ., F.R.I.C.S., F.A.I.) held that as a cost of works payment was payable in respect of the war damage, under s. 53 of the Act of 1947 the property must be considered as if the war damage had been made good. The former tenant had given evidence that neither he nor the sub-tenants had had any intention of returning to the premises, and although the contractual tenancy had been determined by the increase of rent in 1938 and there had thereafter been a statutory tenancy under the Rent Acts, on June 28, 1950, the owner had a right to vacant possession. It followed that the notional lease provisions of s. 52 of the Act of 1947 applied. The parties had agreed alternative valuations (1) on the basis of an unencumbered freehold interest with vacant possession, and (2) on an investment basis. The compensation was determined to be the former of these values, *viz.* £620.

Lane v. Croydon Corporation (August 23, 1951). This was a claim for compensation in respect of the compulsory acquisition of 0.132 acre of land in Croydon. The land had been fenced and gates provided, but had been used only for a public air raid shelter and site for an advertisement hoarding. Notice to treat was served on December 21, 1950.

The Tribunal (JAMES L. MILNE, ESQ., F.R.I.C.S., F.A.I.), having regard to the assumption required by s. 51 of the Act of 1947 that the land could be used only for agricultural purposes, which would include the keeping of poultry, assessed the compensation at £50.

Executors of K. Kusel, decd. v. Weymouth Corporation (August 23, 1951). Two separate claims in respect of distinct parcels of land, were made consequent upon the compulsory purchase thereof the notices to treat being dated respectively October 5, 1949, and February 1, 1950.

The first parcel of land comprised 43.28 acres of swampy land about one mile from Weymouth, separated from the beach of Weymouth Bay by a road, and lying mainly below highwater level in the bay. From 1933 to 1939 tipping had taken place on part of the land, and in 1935 there had been some use of that part as a car park, from which the owner had obtained about £30. During the war the land had been requisitioned for defence purposes. Subsequently, further filling work had taken place, the total cost of this work since 1933 in respect of this land being £692. In 1946 the car park land had been leased for six weeks and used as a fun fair at a rent of £250.

The second parcel of land comprised areas of 11.72 acres and 0.18 acre of waste land and a sluice channel of 0.07 acre, these lands being adjacent to the first parcel referred to above, and being swampy land of a similar character. Tipping and filling had taken place on this land at a total cost of £1,280, and part had been used for the car parking and fun fair purposes.

All of the land was unoccupied on July 1, 1948.

The Tribunal (JAMES L. MILNE, ESQ., F.R.I.C.S., F.A.I.) determined that as no interim development permission had been obtained in respect of the tipping and filling operations or in respect of the use for car parking or as a fun fair, these uses were contraventions of previous planning control under s. 75 (9) (*a*) of the Act of 1947. The land was unoccupied on July 1, 1948, and after that date planning permission for any of the foregoing uses would be necessary, the permission given by s. 12 (5) of the Act to use land for the purpose for which it was last used not extending to uses commenced in contravention of previous planning control. Under s. 51 of the Act of 1947 it was therefore necessary to assume that planning permission would not be granted for any of these purposes.

The Tribunal rejected valuations submitted on behalf of the claimant based on a value of £40 per acre for most of the land, £100 per acre for part, and the cost of infilling. The District Valuer's figure of £5 per acre was accepted as the agricultural value of the land, and, with an increase of £20 in respect of the amenity value to two existing houses of a small part of the land, the compensation was determined at £220 and £80 in respect of the two parcels of land.

Andrews v. Weymouth Corporation (August 23, 1951). This was a claim for compensation in respect of the compulsory purchase of 8.83 acres of land near Weymouth (adjacent to the land in the *Kusel Cases* noted immediately above). Notice to treat was dated October 5, 1949. The land had been purchased by the claimant in 1939 for £675. Part of the land had been reclaimed by tipping and filling and prior to 1947 had been used for a business of tea chalet, glida pool and car park. The land had been requisitioned during the war. Subsequently further tipping had taken place and the filled area used as a car park, no charge being made. The rest of the land was of a swampy nature.

The Tribunal (JAMES L. MILNE, ESQ., F.R.I.C.S., F.A.I.) determined that as the construction and use of the tea chalet, glida pool and car park had been undertaken with interim development permission on January 7, 1937, although the land had been unoccupied on July 1, 1948, under s. 12 (5) of the Act of 1947 planning permission would not be necessary for resumption of this use, and rebuilding of the tea chalet, which had been demolished during the war, was permissible under Sched. III to the Act, with 10 per cent. increase in size. The building would be a " shop " under the Use Classes Order and the parking of cars would be permissible in connection with the tea chalet and pool.

The use of other land as a car park and the tipping and filling had taken place in contravention of previous planning control under s. 75 (9) of the Act of 1947, and these uses could not be considered in assessing the compensation.

The Tribunal rejected the District Valuer's figure of £175 for the tea chalet site, and allowed £750 therefor. For the remaining land, the agricultural value was taken at £10 per acre, giving a figure of £85. The total compensation was accordingly assessed at £835.

A. W. Curton Ltd. and The Abbey National Building Society v. Harrow U. D. C. (August 23, 1951). This was a claim by the freehold owners and the mortgagees for compensation upon the compulsory acquisition of 16.83 acres of land at Edgware, Middlesex. Notice to treat was dated January 6, 1950. The owners submitted a claim for £45,000, the acquiring authority to fence off the land from other land not taken. The District Valuer valued the land at £30,000. The land was part of an area of 63 acres purchased by the owners in 1926 for £78,900.

In December, 1948, planning permission for residential development of the land had been granted and in October, 1949, a " dead ripe " certificate under s. 80 of the Act of 1947 had been granted by the Minister of Town and Country Planning. The parties agreed that the compensation fell to be assessed on the basis that the erection of houses authorised by this certificate was permitted development.

The Tribunal (JAMES L. MILNE, ESQ., F.R.I.C.S., F.A.I.) after considering the two valuations submitted accepted the District Valuer's figure of £59,670 (as against the claimants' valuer's £66,220) for the selling value of the land, and his deferment of two years at 5 per cent. (four years to complete), to give £53,703. The cost of roads and sewers was agreed at £8,550, and the Tribunal took £8,055 (District Valuer £8,950, claimant £9,436) as the deduction for developer's profit and risk, leaving £37,098.

The District Valuer had deducted a further £6,272 in respect of the notional lease under s. 52 of the Act of 1947. Counsel for the claimant contended that the land was agricultural property and not within the section. The land had been cultivated for agricultural purposes between 1941 and 1947, but not after that date and as it was not at the date of the notice to treat " *used* as arable meadow or pasture ground only " within the definition of " agricultural land " in the Rating and Valuation (Apportionment) Act, 1928, the Tribunal held that it was not " agricultural property " under s. 52 of the Act of 1947. The notional lease provisions of that section were accordingly to be applied. Such a lease would have little or no intrinsic value but might have a nuisance value against a prospective purchaser. The compensation payable in respect of the land was accordingly assessed at £35,000.

Mallard v. Oldbury Corporation (August 27, 1951). This was a claim for compensation in respect of the compulsory purchase of 900 sq. yds. of land at Oldbury, forming the site of Meadow Road and a vacant strip of land at the side thereof. Notice to treat was dated October 26, 1949.

Meadow Road was an accommodation roadway and the claimant had in 1924 purchased one of a number of building plots on the east side of it and erected a dwelling-house thereon for his own occupation. In 1928 he had purchased at a total cost of about £90 the site of 158 yards of the road and a strip of land beyond it, to which his own land and a number of other plots were adjacent, and he stated that he had spent about £101 on water, gas and electricity services and between £40 and £50 on fences. The roadway was subject to a public right of way for persons on foot and to rights of way for vehicular traffic of certain other plot owners. The acquiring authority had developed the land on the other side of the road, and were now acquiring the road to provide services and proper access thereto.

The Tribunal (JAMES L. MILNE, ESQ., F.R.I.C.S., F.A.I.), whilst not taking into account the special suitability of the land for the purposes of the acquiring authority in view of r. (3) of s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919, determined that it had a value for sale to the frontagers, which was assessed at £50. Compensation could not be awarded for injurious affection to the other land of the claimant except in so far as this would result from works on the land being compulsorily acquired, but the prospect of road works being carried out on that land would diminish the value of the claimant's other property, and injurious affection on this account was assessed at £75.

The total compensation was accordingly £125.

Green v. Birmingham Corporation (August 27, 1951). This was a claim for compensation upon the compulsory acquisition of a three-storey double-fronted shop and eighty-eight houses of the back to back type, situated in ten groups, forty-five being three-storey and forty-three two-storey. The compulsory purchase order incorporated the expedited completion provisions of Sched. VI to the Act of 1944, and notice to treat was deemed to be served on August 14, 1947. Compensation accordingly fell to be assessed under s. 55 of the Act of 1947.

The claimant's valuer assumed a further life of ten years for the existing properties, and estimated the value of the site for redevelopment at £2,578 by one scheme and at £1,719 by another. The District Valuer estimated the life of the existing properties at a further five years and estimated the value thereafter at £209 based on a nominal 1s. per sq. yd.

The Tribunal (JAMES L. MILNE, ESQ., F.R.I.C.S., F.A.I.) held that in considering the Third Schedule development which under s. 55 was to be regarded as permitted, a " building " as referred to in that schedule may consist of a number of dwelling-houses, and the permissible development would be such rebuilding of the existing buildings or any parts thereof as would be in accordance with the building byelaws. It was proper to regard each of the ten self-contained groups of houses as a separate entity and to assume that one or more of the houses in a group could be rebuilt within the limits of size prescribed by the Third Schedule.

The Tribunal accepted the claimant's valuer's figure of £720 in respect of the double-fronted shop, and adopted the sum of £3,500 in respect of income to be derived from the houses, based on a further life of ten years but allowing a deduction for repairs and taking into account that the property would be a precarious investment. The value of the reversion to the site after ten years with the prospect of redevelopment having regard to the principles referred to above, was determined to be £1,250.

The total compensation was the sum of these amounts, *viz.* £5,470.

Thomson v. Wisbech Corporation (August 28, 1951). This was a claim for compensation upon the compulsory purchase of a cottage at Wisbech. Notice to treat was dated August 12, 1947, and compensation was therefore to be assessed under s. 55 of the Act of 1947. At this date the cottage was let by the claimant to her parents, who were of advanced age, by a tenancy agreement under which the rent was £5 per annum.

The Tribunal (CECIL H. BAILEY, ESQ., B.SC., M.I.C.E., F.R.I.C.S.) had regard to the acquiring authority's contention that the assessment was subject to s. 52 (5) of the Act of 1947, and that the rental of £5, although a " family rent ", must be regarded as the standard rent in view of *Insall* v. *Nottingham Corporation*, [1949] 1 K. B. 261. But having regard to the age of the tenants the property would have some " speculative " market value, although it must be assumed that vacant possession could not in any event be obtained before January 1, 1954.

The Tribunal accordingly determined the amount of compensation to be £250.

Notes of Planning Decisions*

Erection of Dwelling-house in Proposed Shopping/Business Area

The following is an extract from the letter of the Minister of Local Government and Planning, dated August 4, 1951, allowing an appeal against the refusal of the Gillingham Borough Council to permit the erection of a private dwelling on land at Hempstead Road, Gillingham.

"Permission was refused on the grounds that the site is within an area which it is proposed to include in the county Development Plan as a local shopping and business area, and that the proposed use of the site for the erection of a dwelling would prejudice such development. While the Minister appreciates your Council's concern for the future planning of the area it is clear to him that the proposed shopping centre will not be required until further residential development takes place at Hempstead, and this is unlikely to happen for some considerable time to come. Furthermore the Minister is not satisfied that the ultimate shopping centre must necessarily embrace the appeal site.

He has therefore decided to allow the appeal, and to grant permission for the erection of a private dwelling on the land in question subject to the condition that the siting, design and external appearance of the building shall be as may be agreed with the local planning authority, or, in default of agreement, as shall be determined by the Minister."

[By courtesy of Messrs. W. E. R. Randall & Sons, Surveyors, Auctioneers, Estate Agents and Valuers, Chatham.]

Permission Granted After Previous Refusal—Erection of Bungalow in Rural District

The following is an extract from the letter of the Minister of Local Government and Planning, dated January 30, 1951, allowing an appeal against the refusal of the Hambledon Rural District Council to grant permission for the erection of a bungalow on land at Milford, Surrey.

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* The Managing Editor desires to express his thanks to those who have been kind enough to send to this Journal particulars of planning decisions, and hopes that he will continue to receive particulars of planning decisions which involve points of general interest.

" A previous application to build on the appeal site was refused by your Council in 1948, and on appeal the Minister supported their decision, having come to the conclusion that the Council's policy to restrict future development around Milford Station with the object of preserving the rural amenities of the locality was justified. He expressed the opinion that the proposed development could not be carried out without tending to encourage further building around Milford Station likely to lead to the coalescence of Milford and Witley. Since then much detailed consideration has been given to the planning of rural districts and the best means of preserving the amenities of the open countryside without unduly restricting the claims of developers. While the Minister still considers it to be essential to the proper planning of rural areas that future building should generally be restricted to well defined limits in or around the existing village centres, he considers on further examination of the circumstances of this case that a bungalow erected on this particular plot would cause little harm."

[By courtesy of the County Planning Officer, Surrey County Council.]

Erection of Dwelling-house Outside Development Area of Village

The following is an extract from the letter of the Minister of Local Government and Planning, dated August 24, 1951, conditionally allowing an appeal against the refusal of the Beverley Rural District Council to grant planning permission for the erection of a dwelling-house on land at Cherry Burton.

" The Minister agrees with the Council that further residential development in the locality should normally be restricted to the proposed development area for the village of Cherry Burton, and that development outside that area should be carefully controlled. He considers, however, that the erection on the site of a carefully sited dwelling of good design and constructed of materials in keeping with the character of the surroundings would not prove harmful to existing amenities, particularly as the appellant proposes to retain a clump of trees on the south-west corner of the land. The Minister appreciates the Council's anxiety lest the formation of a ribbon of dwellings should be commenced along the east frontage of route B. 1246, but a decision favourable to the developer would not imply that further residential development should be permitted. Any further similar applications would necessarily require to be determined on their merits. In the present case the appellant and her husband have been associated with the locality for many years, and he feels that their claims to live on the site merit special consideration.

He has, accordingly, decided to allow the appeal and to grant permission for the erection of a dwelling-house on the site, subject to the following conditions :—

(1) that the siting, design and external appearance of the building shall be as may be agreed by the Council or, failing agreement, as shall be determined by the Minister;

(2) that vehicular and pedestrian access from the site shall be constructed to Leconfield Road close to the east boundary of the site and in such manner as may be agreed with the Council or, failing agreement, as shall be determined by the Minister."

[By courtesy of Messrs. Robinson, Sheffield, and Till, Solicitors, Beverley.]

Refusal by Minister After Conditional Determination by Authority—Erection of garage with Cottage Over

The following is an extract from the letter of the Minister of Local Government and Planning, dated February 6, 1951, following an appeal against a condition imposed by the Leatherhead Urban District Council in granting permission for the rebuilding of an existing garage and providing gardener's accommodation above, on land at Guildford Road, Great Bookham, Surrey.

The land under appeal forms part of the grounds, about one and three-quarter acres, of a dwelling-house, and the Council granted permission subject " to the proposed dwelling being used with the main residence ".

" The Minister fully endorses the general policy of the local planning authority to restrict future building in or around Bookham to areas within well defined limits, and he considers that they are right in seeking to prevent the westward expansion of the urban development of Bookham along the Guildford Road towards Effingham. In his opinion the development now proposed could not fail to extend the development area westwards and further reduce the already narrow wedge of open country between the two villages.

After careful consideration of all the facts and representations before him the Minister has decided to exercise his powers under s. 16 (2) of the Act to deal with the application as if it had been made to him in the first instance and to refuse permission for the development proposed."

[By courtesy of the County Planning Officer, Surrey County Council.]

Erection of Dwelling-house, Garage, Bungalow, and Buildings on Smallholding

The following is an extract from the letter of the Minister of Local Government and Planning, dated February 7, 1951, dismissing an appeal upon the failure of the Tring Urban District Council to issue a notice of decision on an application for permission to erect a dwelling-house, garage, bungalow and farm buildings on land at Tring Grange Estate between Cholesbury and Wigginton.

" The Minister agrees with the local planning authority that sporadic development would be out of place in the area, and that every effort must be made to remedy the earlier unfortunate proposals for the residential development of the estate.

He is satisfied, however, after consultation with the Minister of Agriculture, that the appellant has enough land to establish a smallholding with reasonable prospects of success. He considers also that the efficient management of a smallholding of this size would warrant residential accommodation for the owner on site.

The Minister is clear, however, that the appellant's building proposals are ambitious for this particular smallholding, and he considers that they should be modified to be more in keeping with the ordinary requirements of a smallholder so that this smallholding could fairly be regarded as a suitable unit for a working owner. Subject to this, and provided the buildings are compactly grouped in an inconspicuous manner, and are suitable in size and design, the Minister feels that the local amenities would be adequately safeguarded, and that there would be no objection in principle to the granting of permission.

Accordingly, the Minister has decided to dismiss the appeal, though without prejudice to the submission of a fresh application for approval of a modified scheme as outlined above."

Correspondence

Appeals Against Enforcement Notices

To the Managing Editor,
Journal of Planning Law.

Sir,

In his most interesting article in your last issue[1] Mr. Megarry suggests with regard to the plea of "No Development" as a ground for quashing an enforcement notice, that there is no compelling case for stretching the language of s. 23 (4) (*a*) to allow such a plea. He does not, however, refer to s. 17 of the Act. This section enables an applicant to obtain from the local planning authority a determination whether a proposed change of use or operation would constitute or involve development within the meaning of the Act, and if so whether an application for planning permission is required. There is an appeal to the Minister. The proviso to sub-s. (2) of s. 17 enacts that "where it is decided by the Minister . . . that any operations or use . . . *would constitute or involve development of the land or* that an application for permission is required . . . that decision shall not be final for the purposes of an appeal to the Court under the provisions of this Part of this Act relating to the enforcement of planning control in relation to those operations or that use".

To my mind this is a clear indication that the Act contemplates that a plea of "No development" may properly be raised on an appeal to the Court, and that the word "development" in s. 23 (4) (*a*) must be construed as "alleged development", *i.e.*, what "appears" to the local authority to be development under s. 23 (1). It would, of course, have been very much more satisfactory if the section had specifically provided for the notice to be quashed on the ground that the operation or use in question did not "constitute or involve development", so that the wording would then have fitted in with what seems to me to be the obvious intention to be inferred from s. 17 (2).

Yours faithfully,

A. T. Barringer,

Deputy Town Clerk.

Borough of Shrewsbury.

To the Managing Editor,
Journal of Planning Law.

Sir,

I would like to add one point to Mr. Megarry's interesting analysis of the enforcement notice quandary, in the September issue of the *Journal*.[1]

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[1] *Ante*, p. 512.

Under s. 23 (4) (*a*) of the Act of 1947 an enforcement notice may be quashed if the development is one for which permission is not required. Subject to three exceptions, no development within the meaning of that term as defined in s. 12 (2) can be carried out without permission. A change of use within the same Use Class is not a development, so that *prima facie* an enforcement notice wrongly served in respect of such a change could not be quashed. Developments carried out under the authority of a development order are permitted by the order (s. 13 (1) (*a*)). The three exceptions are the resumption of a previous use after the expiry of a limited period permission (s. 18 (5)) or after the service of an enforcement notice (s. 24 (4)) and the cases dealt with in s. 12 (5).

I suggest, however, that the word "development" in s. 23 (4) (*a*) is used loosely: the planning authority serve an enforcement notice alleging a development (s. 23 (2): "shall specify the development which is alleged") and it is the "alleged development" which is under examination. If the alleged development is not a development as defined it does not require permission and the notice may be quashed. That seems to me to be a perfectly logical interpretation and consistent with s. 23 (2).

If a notice is bad the person served is aggrieved and has a right of appeal under s. 23 (4). Having gone through the motions of appeal it would seem unnecessary to attend the hearing to satisfy s. 24 (1) and by notifying the authority in advance that no appearance will be made, costs may be saved. The authority would proceed to incur expenses under s. 24 (1) at their peril.

It cannot have been intended that s. 24 (1) should enable an authority to proceed to carry out works for removing a lawful development. Yet there is no qualification that the enforcement notice must be a lawful one, and the only pre-requisite to the execution of works is that the owner has failed to comply with the notice. It must, therefore, be assumed that the Act intends that the owner should in some form have the power to resist a notice requiring such works to be carried out and that again supports my suggestion as to the interpretation of "development" in s. 23 (4) (*a*). If the validity of the notice could be challenged after the execution of the works, the authority might not only be unable to recover their expenses but might also be liable in damages for trespass in carrying out the works, which is, of course, another very good reason for differentiating between s. 24 (1) and (3).

Yours faithfully,

W. A. LEACH, F.R.I.C.S.

Eastbourne.

Practical Points

All questions for consideration should be addressed to "The Managing Editor, The Journal of Planning Law, 3 Chancery Lane, London, W.C.2." The questions of subscribers only are answerable in the Journal. All questions should be submitted in duplicate. The Publishers cannot accept any responsibility for the correctness of replies.

332. *Claims on global sum—limited period permission.*

A claim under s. 58 of the Town and Country Planning Act, 1947, has been made in respect of garage premises which are the subject of a limited planning permission, granted by the local authority in 1946 for a term of five years.

We understand that the Press Notice on the subject, ([1950] J. P. L. 602) is intended to refer to temporary use only and not to temporary buildings, as in this case. We are not clear as to the effect of the notice on claims as opposed to development charges.

However, the Central Land Board now inform us that following the advice of their legal department they intend to make no development charge for the renewal of temporary permissions of either class which were first granted prior to the appointed day (see *ante*, p. 608).

The District Valuer contends that this ruling should be applied also to claims for loss of development value, and we should be very glad to hear if you consider this to be a correct assumption. [H. F. D. & M.]

ANSWER

The limited period permission is not in respect of a Third Schedule development and the possibility of its renewal must, in the express terms of the Act (s. 61 (2) (*a*)) be ignored as regards the restricted value. In calculating the unrestricted value regard should be had to the possibility of the renewal of the permission, the possible aggregate duration of renewals, and the possibility of a claim for compensation under ss. 18 and 19 of the 1932 Act in the event of non-renewal. [W. A. L.]

333. *Claims on global sum—liability of trustee for failure to make a claim.*

T.G. died in 1887 and under his will, E.C. had a life interest in the whole of the property. E.C. died in 1941 and her children, A, B, and C became absolutely entitled as remaindermen to the corpus of the estate.

Part of the trust estate consisted of freehold land, in respect of which a claim could well have been made under the Town and Country Planning Act, 1947, but no such claim was made.

Subsequent to the death of E.C., P. & Co. acted for the trustee and X acted for the remaindermen. The majority of the work of winding up the estate on the death of the life tenant was done by X. In March, 1946, an assent was made by the trustee purporting to vest the land in A, B and C. This assent is non-effective and a conveyance by the trustee is necessary effectually to vest the land in A, B and C. The winding up of the estate of T.G. has not even yet been completed. At the date of the assent, all matters had been dealt with with the exception of payment to P. & Co. of the death duties which they had paid and the accounting by P. & Co. of certain dividends which they had received on behalf of the trustee.

X did not give the matter proper attention; his instructions have been withdrawn and we are now acting for the beneficiaries A, B and C. X never advised the beneficiaries, A, B and C, upon the terms of the Act of 1947 nor that a claim ought to be made under the Act in respect of the land.

From the view point of the beneficiaries, considerable loss will be entailed owing to the failure to make the claim. As the estate of T.G. is still not wound up no discharge has been given to the trustee. Is it considered that as between the beneficiaries, A, B and C, and the trustee, the trustee can be held personally liable for the failure to lodge a claim? As between the beneficiaries and X, their solicitor until recently, is it considered that there is any liability upon X in the matter? [G. C. & S.]

ANSWER

Section 64 prescribes that the person who should claim is the owner of the interest and as there has not been an effective assent A, B, and C are not at the appropriate time the owners and therefore, X as their solicitor does not appear to be responsible. As the property is vested in the trustee he was the appropriate person to make the claim and by reason of the strict obligations placed on a trustee by law he is probably personally liable for failure to lodge a claim. [R. P. C.]

334. *Planning permission—change of use during war period.*

Premises consisting of a shop and upper part which are intended for residential use, are situated within an area which was scheduled under the former operative town planning scheme for residential purposes. The user for business purposes has, however, continued for something like forty years, and there is, accordingly, what have come to be known as pre-scheme rights in respect of the premises in question, *i.e.*, the user commenced before the resolution to prepare the scheme. It is appreciated that there must have been a continuous user, and that if there has been a gap of more than eighteen months, then the right to resume the former use is lost. In this particular case, there was a gap for about seven years during the war period when the premises were used for industrial purposes, which has now ceased, and it is desired that the premises should now revert to the original use for retail trade.

In your opinion, does the non-conforming user for industrial purposes during the war period mean that the right to resume the former use is lost? We have, by the way, not been able to find any section in the 1947 Act which deals with this gap of eighteen months, and we believe it was provided for in the 1932 Act. [G. L. B.]

ANSWER

The user can only be saved if the war period change can be considered as a temporary use and the resumption of the old use as a reversion to normal use (s. 12 (5) (*a*) of the Act of 1947).

There is some authority for the proposition that a "temporary" use may exist for years and means something that may within the reasonable contemplation of the parties come to an end some day: *Burrows* v. *Lang*, [1901] 2 Ch. 502, at p. 508.

The abnormal conditions of the war lead me to suggest that this might properly be considered as a reversion to normal use.

S. 53 of the 1932 Act refers to a gap of eighteen months in the use period but does not affect this position. Contravention is now governed by s. 75 (9) of the Act of 1947. [R. P. C.]

THE JOURNAL of PLANNING LAW

Published by

SWEET & MAXWELL, LIMITED
2 & 3 CHANCERY LANE, W.C.2

On the First of Every Month

Subscription: £1 10s.

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"*Planning Law*" *Notes*

In the course of a discussion at the Town and Country Planning Summer School at Oxford on September 18, a former Minister of Town and Country Planning, Lord Silkin, said that many of the provisions of the Act of 1947 resulted from the complicated nature of land holding in Great Britain. If land tenure were simplified then everything would be easy. The complexity of the Act would be reduced 1000 per cent.

Lord Silkin also said that in introducing the Act the Government had realised the objections which could be raised in relation to Parts VI and VII, but there had been no practical alternative. Even at this late hour, if anyone could find a better alternative for the compensation and betterment clauses, he would be one of its chief supporters.

The Minister of Local Government and Planning, Mr. Dalton, has now decided that he should take formal steps under the New Towns Act, 1946, towards setting up a Development Corporation to build a new town at Congleton, Cheshire. The main object of the new town will be to assist in meeting the formidable " overspill " problem faced by local authorities in South Lancashire. The Minister is now consulting all the local authorities concerned.

In a case noted in this issue (*post*, p. 661) the Divisional Court of the King's Bench Division have given their ruling on the question whether enforcement proceedings under s. 75 of the Act of 1947 may be in respect of development carried out before April 1, 1933, the date of coming into operation of the Act of 1932.

The decision of the Court, which is contrary to the view which the Minister had adopted on this question (*ante*, p. 402) will be of considerable importance in many enforcement action cases now pending in courts of summary jurisdiction.

An article on the questions raised appears at p. 642, *post*.

The industrial estate forming part of the new town of Harlow was formally opened by the Parliamentary Secretary to the Ministry of Local Government and Planning, Mr. Lindgren, on September 24. Rapid progress has been made since the Minister, Mr. Dalton, visited the new town on May 9, 1951. Nearly 400 dwellings are occupied and nearly 2,000 houses are under construction. Mr. Lindgren turned a switch which set in motion electrically driven machinery in the twelve factories so far occupied and working.

A public local inquiry was held on September 18 at Caernarvon to hear representations on the proposal of the Minister of Town and Country Planning to include additional land covering fourteen square miles, in the area specified in the Snowdonia Park designation order. The objectors included the Caernarvonshire and Merionethshire County Councils and the Conway Borough Council.

The joint board for the Lake District National Park held its first meeting on September 24, at Kendal. A letter to the Board from the Minister of Local Government and Planning stated that it was for the Boards of National Parks themselves to decide how they should be staffed, and a committee of all the members of the Board is to receive advice on this question from the planning officers of the three counties of Cumberland, Lancashire and Westmorland.

The first appeal to come before the Lands Tribunal against a determination of development value by the Central Land Board under Part VI of the Town and Country Planning Act, 1947, was heard on September 27, 1951. A summary of the case will be published in this Journal when the decision is available.

There have already been two awards by Arbiters in appeals under Part V of the Town and Country Planning (Scotland) Act, 1947. In the first case the Arbiter upheld the Board's view that the development value of a plot of land at Strathkinness, Fife, was nil. In the second case the Arbiter upheld the

Board's assessment of £300 as the development value in 7.7 acres of land known as Cameron Wood, Leanhead, Midlothian. The claimant had suggested a figure of £7,462 on the basis, which was not accepted, that the land was capable of being developed for forty bungalows.

Up to date 662 appeals against the Board's determinations have been lodged, of which 428 have been withdrawn. About 450,000 determinations have been issued by the Board.

In an article in our last issue attention was drawn (*ante*, pp. 592–3) to the difficulty that exists in deciding whether development in respect of which there has been a determination of deemed compliance with planning control under the Building Restrictions (War-Time Contraventions) Act, 1946, made after July 1, 1948, and made subject to conditions, *e.g.*, a time limit, was governed by the provisions of s. 76 or of s. 75 of the Act of 1947.

Just how important this distinction may be is illustrated by a case which has now been decided by the Divisional Court (*post*, p. 660). A use in respect of which there had been such a determination under the Act of 1946—although in this case made before July 1, 1948—was held to be subject to s. 76 of the Act by virtue of subs. (5) thereof. Accordingly s. 75 was not applicable, and in view of para. (*a*) of s. 23 (4) as substituted by s. 75 (5) it was necessary that an enforcement notice which was expressed to be served under s. 75 in respect of the use should be quashed on an appeal to the magistrates.

PUBLISHER'S NOTICE

It is regretted that, owing to the continual rise in the cost of printing, paper, and overhead expenses, it has become necessary to increase the subscription rate to the *Journal of Planning Law* to 35s. This rate will apply to subscriptions for 1952.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Journal. They should be sent to the MANAGING EDITOR, *Journal of Planning Law*, 3 CHANCERY LANE, LONDON, W.C.2. *Every attempt will be made to return drafts or unsuitable copy, but no guarantee can be given in this respect. Books for review should be sent to the Publishers at the above address.*

Development Plans: Designation or Allocation of Land

By DESMOND HEAP, LL.M., L.M.T.P.I.
Comptroller and Solicitor to the Corporation of the City of London

Many development plans made under s. 5 of the Town and Country Planning Act, 1947, have already been deposited by local planning authorities with the Minister of Local Government and Planning, and many more will be deposited in the near future following extensions of time for so doing granted by the Minister. A development plan will not come into force until approved by the Minister (s. 5 (4)) who, before doing so, will probably hold a public local inquiry (s. 10 (2) (*b*), and Town and Country Planning (Development Plans) Regulations, 1948,[1] reg. 17), at which objections to the plan can be discussed. Details of the procedure for the submission and approval of development plans are to be found in Part III of the Town and Country Planning (Development Plans) Regulations, 1948, and in accordance with the Form of Notice of Submission of Development Plan set out in Part I of the Second Schedule to those Regulations a certified copy of the development plan as submitted for the Minister's approval will be deposited for public inspection at a specified place.

On such inspection it may well be found that there has been more allocation of land for specified purposes and less designation of it as being subject to compulsory acquisition than was thought likely to be the case when s. 5 of the Act became law. Accordingly, it is proposed in this article to examine the provisions of the Act relating to allocation and designation of land.

Details as to the form and content of development plans are to be found in Part II of the Town and Country Planning (Development Plans) Regulations, 1948, but some interesting fundamentals are dealt with in s. 5 (2) of the Act itself under which it is provided that, amongst the many other things which a development plan may include and provide for, the plan may in particular—

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[1] SI 1948, No. 1767; [1948] J. P. L. 403.

1. *define* the sites of proposed roads, public and other buildings and works, airfields, parks, pleasure grounds, nature reserves and other open spaces;
2. *allocate* areas of land for use for agricultural, residential, industrial or other purposes of any class specified in the plan;
3. —(1) *designate* as land subject to compulsory acquisition by any Minister, local authority or statutory undertakers any land allocated by the plan for the purposes of any of their functions (including any land which that Minister or authority or those undertakers are or could be authorised to acquire compulsorily under any enactment other than the 1947 Act);

   (2) *designate* as land subject to compulsory acquisition by the appropriate local authority—

   (i) any land comprised in an area defined by the development plan as an area of comprehensive development (including any land therein which is allocated by the plan for any such purpose as is mentioned in para. 3 (1) above), or any land contiguous or adjacent to any such area;

   (ii) any other land which, in the opinion of the local planning authority, ought to be subject to compulsory acquisition for the purpose of securing its use in the manner proposed by the development plan.

This principle of allocating areas of land for use for specified purposes is comparable to the principle of zoning which, under the Town and Country Planning Act, 1932, used to be a matter of common parlance in planning circles but which is not mentioned by name at all in the 1947 Act.

The principle of designating land as subject to compulsory acquisition has been developed in the 1947 Act but was first made the subject of statutory enactment in the Town and Country Planning Act, 1944. Designation of land as being subject to compulsory acquisition does not itself secure such acquisition but merely earmarks land as being liable to have the compulsory purchase procedure of an entirely different Act, namely, the Acquisition of Land (Authorisation Procedure) Act, 1946, directed against it at a later date.

Nevertheless, the designation of land as being liable to compulsory purchase involves the taking of a highly decisive step by a local planning authority and one which may have immediate repercussions on the landowner concerned because, as soon as it is discovered, as it will be when the contents of the new development plans become public as they shortly will, that a plot of land has been designated under s. 5 of the 1947 Act, the landowner will have no incentive to develop it himself and will surely have small opportunity of selling it to any other person for development by the latter. In short, designation of land, being the decisive act which it is, really amounts to the sterilisation of the land until the designation is acted upon and the land is compulsorily acquired by, as the case may be, the authorised Minister, local authority, or statutory undertaker.

It is no doubt for this reason that the Act provides that land shall not be lightly designated, for it is enacted that the Minister may not approve any designation of land as being liable to compulsory purchase if it appears to him that the acquisition is not in fact likely to take place within ten years of the date of the approval of the development plan or, in the case of agricultural land, within seven years of that date (s. 5 (4) (*a*)). Nor can the Minister himself, except with the consent of the landowner concerned, insert in a development plan a provision designating land as liable to compulsory acquisition when no such designation has been included in the plan by the local planning authority preparing the same (s. 5 (4) (*b*)).

It is to be noted that although there is what may be termed a *ten*-year limitation on the designation of land, the owner of designated land cannot bring pressure to bear on the authorised authority to have such land compulsorily acquired until the expiration of *twelve* years (*eight* years in the case of agricultural land (s. 9 (5))) from the date on which the designation became operative (s. 9 (1)). In the meantime designated land if not purchased and used by the authority having power so to do will, as has been stated, be in effect sterilised for development.

In view of the foregoing it will not be surprising to find that designation of land is calculated to provoke strong opposition at public local inquiries held by the Minister before approving development plans. When meeting such opposition it may not be an entirely easy thing for a local planning authority to satisfy the Minister that designated land will definitely be required for development within the next ten years because, the times being hard, it is difficult for anyone today to say with reasonable certainty in what year within the next ten a given plot of land will undoubtedly be required for development for a stated purpose. It would appear that those who designate on a grand scale must be prepared to fight stoutly for what they have done when the matter is before the Minister for his approval.

But it is to be remembered that even if the fight is successful, and the designation of land as subject to compulsory acquisition is approved by the Minister, when the time comes for the land actually to be acquired it will still be necessary for the acquiring authority to operate the procedure of the Acquisition of Land (Authorisation Procedure) Act, 1946, and acquire the land through the medium of a compulsory purchase order made under that Act by the acquiring authority, and confirmed under that Act by the appropriate Minister (s. 37 (1) and (4), and s. 38 (1) and (4) of the 1947 Act).

It is true that under s. 45 of the 1947 Act when a compulsory purchase order made under the 1946 Act is before the appropriate Minister for confirmation by him, he may disregard any objection to the compulsory purchase order which, in his opinion, amounts in substance to an objection to the provisions of the development plan defining the proposed use of that land. It is to be noted that the Minister may disregard any such objection but he is not obliged to do so. In this regard it can be stated from the writer's personal experience that when the compulsory purchase order stage is reached following the making of a declaratory order under s. 1 of the Town and Country Planning Act, 1944 (the position will in due course be exactly the same following the making of a development plan under the 1947 Act), the same arguments as were used on the earlier occasion of the public inquiry held into the declaratory order are used again at the public inquiry held into the compulsory purchase order, and there is in fact a repetition of argument on both sides.

It may be felt from the points made in the previous paragraphs that this matter of designating land in a development plan as being liable to compulsory purchase is not quite the helpful thing to local authorities which it was expected to be, whilst, on the other hand, the sterilising effect of designation from the private developer's point of view is not in the national interest.

It is because of the doubtful advantages to be derived from designation that, as stated earlier, the development plans now being submitted for approval by the Minister may well be found to contain less designation of land as liable to compulsory purchase and more allocation of land for specified purposes. As has been mentioned, allocation corresponds to the zoning which figured prominently in town planning schemes made under the Town and Country Planning Act, 1932. Allocation shows the purpose for which the allocated land should, in the opinion of the local planning authority as manifested in its development plan, be used in due course.

It may perhaps be argued that once it appears from a development plan that land has been allocated for a purpose which is inconsistent with its use for private development, then the same sterilising effect will be produced as would have occurred if the land had been designated as subject to compulsory acquisition for a specified purpose. It is submitted that this is not so. If a development plan is going to show *anything at all* it must show what, in the opinion of the local planning authority, all the land covered by the plan should be used for. In doing this, a development plan does nothing more than follow the lines of the town planning schemes made under the 1932 Act. Allocation under s. 5 (2) (*a*) is a much less decisive act than designation under s. 5 (2) (*b*) or (*c*). It is true that allocation of land for a specified purpose may ultimately require the compulsory acquisition of that land by some public authority, but the fact of allocation does not say this in so deliberate a fashion as does designation which is, in consequence, a much more fearsome thing from the landowner's point of view.

Accordingly, it is felt that a landowner would be inclined to object at a development plan inquiry less strongly to the allocation of his land than he would do to its designation. Moreover, on allocating land, a local planning authority is under no obligation to satisfy the Minister that the land will definitely be required for the allocated purpose within any period of ten or seven years, and thus, again, allocation may be more attractive than designation from the local planning authority's point of view as tending to produce an easier passage for the authority at any public inquiry held into objections to the development plan.

It will not, however, be forgotten that when a local planning authority, having allocated land in its development plan for specified purposes, and having met and successfully dealt with any objection thereto at the development plan inquiry, later desires to acquire such land in order to secure its development for the purposes specified in the development plan, it will *then* be necessary for the authority first to designate the land under s. 5 (2) (*b*) or (*c*) of the 1947 Act as being subject to compulsory acquisition. Such designation will have to be effected by some amendment of the development plan and this may necessitate a public local inquiry. After the designation has been effected it will then be necessary for the acquiring authority to go through the procedure of making a compulsory purchase order under the Acquisition of Land (Authorisation Procedure) Act, 1946, in order actually to acquire the land which will have been recently designated. The reason for this is that ss. 37 (1) and 38 (1) of the 1947 Act (which deal with the compulsory acquisition of land) have no operation whatever unless and until the land itself has been first designated in a development plan in pursuance of s. 5 (2) (*b*) or (*c*) of the Act. There is no reference in ss. 37 or 38 to the allocation of land, and allocation alone will not satisfy the requirements of these sections.

Thus, if a local planning authority today seeks to reduce the number of objectors to its development plan by eschewing designation and substituting therefor the mere allocation of land for specified purposes, it will remember that, should the time come when the authority wishes to buy the allocated land for its own use, it will then be unable to avoid further the matter of designation, for without designation it will be impossible, under the 1947 Act as it now stands, for the authority to acquire the land compulsorily under its planning powers.

The Third Schedule Right of Rebuilding[1]

By W. A. LEACH, F.R.I.C.S.

Need for planning permission.

Section 51 (2) of the Town and Country Planning Act, 1947, which governs the compensation payable on a compulsory acquisition where notice to treat is served after July 1, 1948, directs *positively* that it is to be assumed that permission would be granted for development of any class within the Third Schedule. S. 55 (3), which applies where the notice to treat was served after August 6, 1947, and before July 1, 1948, provides *negatively* that the land shall be deemed to be restricted against any development other than within the classes of the Third Schedule. It is, therefore, arguable that under s. 55 (3), to prove that land had a market value for a particular Third Schedule development on January 7, 1947, it must be shown that all requisite consents would have been forthcoming including town planning consent under old control, or that compensation would be payable on the refusal of consent. Compensation would have been payable under s. 19 (2) of the 1932 Act (when a scheme under that Act came into force) so far as any provisions of the scheme regulating the space about buildings, their size and density applied to existing buildings. In view of this provision as to compensation, the provision in s. 10 of the 1932 Act limiting the right to refuse permission for the rebuilding of an existing building on an interim development application, and the positive provision in s. 51 (2) of the 1947 Act (of which s. 55 (3) is presumably intended to be an adaptation) it ought to be assumed that permission for rebuilding would be granted subject to any requirement as to the building line (s. 10 (3) (*a*) (i) of the 1932 Act). It will be appreciated that dealing with the matter as at January 7, 1947, no question would seem to arise of serving a purchase notice if planning permission were refused and certain observations[2] of the Lands Tribunal in *Green* v. *Birmingham Corporation* in this connection are not clear.

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[1] Observations on the Lands Tribunal decision, *Green* v. *Birmingham Corporation*, summarised at [1951] J. P. L. 614.

The scope of the right to rebuild under para. 1 of Sched. III may, perhaps, best be considered in stages.

Is demolition and removal of fence an operation ?

In Circular 67[3] (para. 4) the Minister states he is "advised" (presumably by the appropriate law officers of the Crown) that the demolition of a building is not an operation. Probably this is correct. An operation is a deliberate work: an operation by neglect or accident would be a contradiction in terms and probably no result which might arise equally from neglect or accident as from a deliberate act is an operation. There is no obligation under the Act to maintain buildings, erections, structures and other works. Therefore, to remove a fence, a result which might be achieved by accidentally lighting a bonfire too close to it, by injudicious digging near the posts, by piling earth against it, or, over a longer term, by simple neglect, is probably not an operation.

Rebuilding within curtilage.

Four points arise here in considering the application of Sched. III to the Act. To study the principles assume there are two curtilages, A and B, each bearing a house of 10,000 cu. ft. The four questions are:—

(a) *Building.* What is meant by a building?

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[2] The Tribunal said: "I am of the opinion that the reference to 'building' in Sched. III should be taken to apply to what is ordinarily called a building, and that such a building may comprise more than one dwelling-house, whether the building be divided into dwelling-houses horizontally by ceilings and walls or vertically by walls. Accordingly, I take the view, as regards rebuilding, that the permissible 'development' of the property now in question, to which a prospective purchaser could properly look forward under the assumption prescribed in subs. (3) of s. 55 of the Act of 1947, would be such rebuilding of the existing buildings, or any parts of the existing buildings, as would be in accordance with the byelaws of the City and as would be likely to receive planning permission. But as refusal of planning permission would, in the circumstances which have to be assumed in the present case render the land incapable of reasonably beneficial use, the owner would have the power under s. 19 of the Act to require the City Council to purchase the land, and the purchase price would in such a case be assessed in accordance with s. 51 upon the assumption that planning permission would be granted for development of any class specified in the Third Schedule. As the owner would be entitled either to receive planning permission or to have the land purchased, the possibility that planning permission for rebuilding would not be granted can, for valuation purposes in the present case, be ignored".

[3] [1949] J. P. L. 257.

(b) *Marriageable curtilages.* Could 10,000 cu. ft. plus tolerance be erected within one former curtilage and the second former curtilage be added as open space?

(c) *Marriageable cube.* Could the two curtilages be united into one, and one new building be erected in such a way that of the total cube the cube within neither of the two former curtilages would exceed 10,000 cu. ft. plus tolerances?

(d) *Transportable cube.* Could the two curtilages be united into one and a house of 20,000 cu. ft. plus tolerances be erected anywhere within the new curtilage?

(a) *Building.* The Lands Tribunal in *Green's Case* took the view that a group of buildings would be within " what is ordinarily called a building ". With respect it is not agreed that ordinarily one regards a terrace of houses as " a building ". Where would the limit be between a pair of semi-detached houses and a terrace of a hundred houses? True *Hedley* v. *Webb*, [1901] 2 Ch. 126, would seem to support the Tribunal up to a pair of houses, but that decision was in a case of rather unusual circumstances: *Humphrey* v. *Young*, [1903] 1 K. B. 44, seems to be of more general application and is against the Tribunal. *L. C. C.* v. *Patman & Fotheringham* and *L. C. C.* v. *Davis*, *infra*, are not directly on the point. *Moir* v. *Williams*, [1892] 1 Q. B. 264, related to a number of chambers with their entrances from a common staircase, *i.e.*, the chambers were divisions of what is normally regarded as a building. A unit enclosed on all sides by external and party walls is commonly regarded as comprising a building, and this is perhaps strengthened in law by the holding that party walls are external walls (*Green* v. *Eales* (1841), 2 Q. B. 255) and that party wall openings do not necessarily make two buildings one building (*Snow* v. *Whitehead* (1884) 51 L. T. 253). Whether " building " in the singular includes " buildings " in the plural by virtue of s. 1 of the Interpretation Act, 1889, is not considered by the Lands Tribunal in the decision in *Green's Case*: if a " building " does include a group of houses divided by party walls it was, of course, not necessary to consider that point.

(b) *Marriageable curtilages.* It was said in *Sampson's Exors.* v. *Nottinghamshire C.C.* (1949), 1 P. & C. R. 1, at p. 8, that to add agricultural land to the curtilage of a house involved a change of use of the land for which planning permission would be necessary. Where, however, land in or forming the curtilage of one dwelling-house and used in connection with the occupation of the dwelling-house as such is added to the curtilage of another dwelling-house and used in connection with the occupation thereof as a dwelling-house, the only change is that the land is used adjunctively to a different house. There would seem to be no material change of use and no planning permission would be required. Further, if, as suggested above, the removal of the dividing fence between these two curtilages would not be an operation, it would seem not to be development if the house on, say, plot B of the two curtilages being demolished, the curtilage thereof were to be united with the curtilage of A. Similarly, if both houses were demolished the two curtilages could be united without permission as the curtilage of a new house on either plot. This is, in fact, in line with para. 17 of PRACTICE NOTES which, although dealing with development charge under Part VII of the Act, is also the basis on which the Central Land Board calculate the restricted value for depreciation in development value under Part VI thereof. It would be iniquitous if, having been compensated on that basis under Part VI, the owner were to be denied corresponding compensation under Part V of the Act on the compulsory acquisition of the land.

(c) *Marriageable cube*. The Minister has held that the removal of a party wall is not a development ([1950] J. P. L. 514, and see [1950] J. P. L. 826; also C.L.B./32). The decision is thought to be one of policy rather than law since alterations to a building are excluded from the meaning of development by proviso (*a*) of s. 12 (2) only if (i) they do not materially affect the external appearance of the building *and* (ii) they affect only the interior of the building. The removal of a party wall may fall within (i), but the uniting of two buildings into one affects the whole identity of the buildings and not only the interior thereof. However, assuming the Minister to be correct, two adjoining dwelling-houses could be converted into one dwelling-house without development being involved, and the two former curtilages would *ipso facto* become one curtilage. Whether as a result, the single resulting building could be rebuilt anywhere within that curtilage is a question arising under (d) *post*. It would certainly be logical to hold that the united buildings could at least be rebuilt partly in each former curtilage so long as the former cube on either side of the erstwhile line of division was not exceeded, the enlargement tolerance being either disposable at will, or proportionately to the cube of new building (or old building) on either side of the old line of division. If that would be possible in the case of unity before demolition, on what logic can it be suggested that in the event of demolition before uniting, the rebuilding must be limited by the original curtilages, *i.e.*, that a new building could not comprise, for example, 10,000 cu. ft. in curtilage A and 5,000 cu. ft. in curtilage B?

(d) *Cube transportable within unified site.* The Central Land Board does not question for purposes of development charge that a building re-erected anywhere within the curtilage of the former building enjoys the benefit of para. (1) of the Third Schedule; rebuilding on the same covered site is not necessary (PRACTICE NOTES, para. 16 (b), and second sub-para. 15). This view is supported by *Low* v. *Innes* (1864), 4 De G. J. & Sm. 286, and in *Re Walker's Settled Estates*, [1894] 1 Ch. D. 189, at p. 192.

If it is not development to remove a party-wall and unite two buildings, the curtilage becoming common to both, under what provision of the Act can it be suggested that there is no right to rebuild to the aggregate former cube plus tolerance *anywhere* within the new curtilage? Para. 1 of Sched. III nowhere mentions curtilage, but accepting that that has to be imported, there is no prescribed date by reference to which the curtilage has to be determined. If, however, the appointed day has to be assumed, then if the uniting is not development, surely in logic the result of the uniting should have the same rights as if it had existed on the appointed day?

Further, if that effect be possible by uniting before demolition, on what grounds should uniting in the course of rebuilding be distinguished?

There being no reference in para. 1 of Sched. III to curtilage, the purpose of the provision is perhaps simply to exclude replacement of *cube* from liability to development charge. The Central Land Board admit that cube on four floors may be replaced on two floors (PRACTICE NOTES, para. 16 (b)); design and identity of the building are not involved but cube and only cube. The position would seem, therefore, to be no different in principle from that arising under s. 13 (5) of the London Building Act, 1930, under which it was held a person re-erecting a building or structure existing on January 1, 1895, within the prescribed distance from the centre of the street could re-erect a wholly different building (*e.g.*, a single industrial building in place of small dwelling-houses) the subsection being concerned with the identity of the ground area, (*L. C. C.* v. *Patman and Fotheringham* (1903), 1 L. G. R. 519; 67 J. P. 285; see also *L. C. C.* v. *Davis* (1897), 62 J. P. 68). Under para. 1 of Sched. III to the 1947 Act the identity of the building would seem not to be in question; the position differs from that under the London Building Act only in that the cube formerly existing is in question instead of the ground area formerly covered by the buildings. On this principle it should be possible to marry a number of sites and erect one or more buildings in any position thereon so long as the former aggregate cube is not exceeded, *i.e.*, the cube would be transportable to any part of the unified site. It may be that the addition for tolerance should have regard to the nature of the new building or buildings, and not automatically be the aggregate of the tolerances due to the former buildings, *e.g.*, in erecting one dwelling-house in place of two it may be doubted whether the enlargement due to the two dwelling-houses could be claimed and the 10 per cent. rule might prevail.

The whole position is one of considerable complexity and since early clarifying legislation cannot be hoped for, the views of the Courts would be welcome. Perhaps as a matter of public interest important to both of them, the Minister and the Central Land Board would defray the costs of a suitable appeal in preference to handling Part VI claims and future acquisitions on this edifice of doubt. *Green* v. *Birmingham Corporation* flies in the teeth of para. 14 of PRACTICE NOTES, and " something ought to be done about it ".

Enforcement Proceedings: Appeals to Quarter Sessions

By ALAN GARFITT, LL.B., Barrister-at-Law

At [1949] J. P. L. 365, the writer was bold enough to assert that s. 23 (5) of the Town and Country Planning Act, 1947, permits an unsuccessful appellant to appeal from petty sessions to quarter sessions and that the dictum of Lord Goddard, C.J., in *Stepney Borough Council* v. *Joffe*, [1949] 1 K. B. 599, was sufficient authority for asserting that an unsuccessful planning authority has no such right of appeal.

This dictum of Lord Goddard was upheld and approved when the point was directly in issue in relation to similar provisions of another Act, in *R.* v. *London Sessions Appeals Committee, ex p. Westminster City Council*, [1951] W. N. 266, and one was inclined to think the issue was then concluded.

In some cases, however, a planning authority will have a right of appeal to quarter sessions, and the deciding issue is that of costs. In *Jennings* v. *Kelly*, [1940] A. C. 206, it was held that the award of costs against an unsuccessful participant in proceedings will make him a party aggrieved. By the provisions of the Interpretation Act, 1889, a local authority has the status of a "person", and, if the justices in petty sessions make an award of costs against the unsuccessful planning authority in enforcement proceedings, the authority become thereby "a person aggrieved". As such, they have a right of appeal under which the whole matter can be re-opened, and the initial decision of the planning authority restored: *R.* v. *Surrey Quarter Sessions Appeals Committee, ex p. Lilley*, [1951] W. N. 443.

Having regard to the present state of the authorities, those acting for appellants may be wise to advise their clients that, whatever they may feel as to their moral right to recompense, they should, if successful, make no application for costs, nor accept any offer made by the Court, or thrust upon them by an apparently benevolent and well-meaning adversary.

Contravening Development Before 1933

By T. A. Blanco White, Barrister-at-Law

The case of the Beconscot Model Town (*Bucks County Council* v. *Callingham*, noted *post*, p. 661) has drawn attention to one of the most involved of the obscurities of the Town and Country Planning Act, 1947. The question is this: What is the meaning of the words "in contravention of previous planning control" in s. 75 of that Act? Sooner or later, no doubt, this question will cease to be important: it can only arise upon enforcement notices which were served before July 1 last and are still outstanding. It seems likely, however, that such notices are numerous

On the face of them, the words "in contravention of previous planning control" seem clear enough. A certain amount of historical research may be needed to ascertain whether any particular activity was or was not within the scope of planning control at any particular date (either generally, or in any particular area); but the words themselves present no obvious difficulty. It is s. 75 (9) that raises our first doubts: for it appears to set out, item by item, the various ways of contravening previous planning control and to say that these shall be deemed to have been contraventions. But Parliamentary draftsmen often enough do things like that, and there would be no insuperable difficulty if it were not for the definitions, in s. 119, of "planning scheme" and of "interim development order".

Take "planning scheme" first. It is defined as meaning a scheme under either the 1932 Act or its predecessor, the 1925 Consolidating Act. Now it may well be that there were no schemes before 1925; but there were resolutions to prepare schemes: the "resolution" procedure, under which a local authority could establish planning control merely by resolving to prepare a scheme goes back to the 1909 Act—save only that before 1919, and in some cases before 1922 (not 1925: the 1925 Act was mere consolidation), the relevant Ministry had to sanction the resolution. Yet it would be strange if the draftsman of s. 119 had deliberately set out to exclude from the definition of "previous planning control" just those areas that had been the first to establish planning control, and so had never made resolutions under the 1932 or 1925 Acts because their areas were already subject to resolutions when the first of those Acts came into force. The explanation of this definition seems to be, that the draftsman had observed that under the transitional provisions of the 1925 Act, previously existing resolutions and schemes became thenceforth resolutions or schemes under the 1925 Act itself. The effect of this is to leave it reasonably clear that in relation to development after 1925, s. 75 (9) applies regardless of the date of the scheme, but to leave in unnecessary obscurity the further question: what about development that took place (without interim development permission) after the resolution but before 1925? Perhaps the better answer here is, to ignore the " deemed " contraventions of s. 75 (9), and simply to rely upon s. 75 (1) itself.

Much more troublesome is the definition of " interim development order ". This is defined as meaning an interim development order made under the 1932 Act. There can be no doubt about this one: the draftsman must have meant to exclude the interim development order which was made under the 1922 Act, and which remained in force until 1933, from his definition. What, then, is the relation of s. 75 (9) to development carried out before 1933 but with interim development permission?

There are four possible answers, none of them satisfactory. First, that here also we forget s. 75 (9) and go back to s. 75 (1). This will not do, because the implication of the word " deemed " (in s. 75 (9)) is that certain things are to be treated as contraventions whether they actually were or not. Second, that s. 75 (9) covers nothing done before 1933. This is believed to have been the view preferred by the Minister (see [1951] J. P. L. 402), but will not do either: the Divisional Court in *Bucks C. C.* v. *Callingham* has decided otherwise. Third, that his interim permission avails the developer nothing: Parliament has said that he ought to have held up his development until 1933. This may well be the strict reading of the Act, but it is hopelessly unreasonable. Fourth, that this is a point at which " the context otherwise requires " (as s. 119 (1) puts it), and the definition does not apply.[1] This is the most attractive answer; but a repetition of the argument for it, in relation to all sections in which the phrase " interim development order " occurs, is apt to lead to the conclusion that the definition is never applicable. This in turn is ridiculous. But somehow or other, an enforcement notice against development carried out with permission may be expected to prove ineffective.

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[1] The curious phrase " the interim development order " (not " an interim development order ") in s. 75 (9) may assist this argument.

The last difficulty is of a similar character. The division of development into " works " and " use " dates in substance from the 1932 Act, and was then new. Before then, while building mostly was within the scope of planning control (where resolutions existed), mere change of use was mostly outside. So far as s. 75 (1) itself is concerned, therefore, most changes of use before 1933 did not in fact contravene planning control even where planning control existed. The deemed contraventions of s. 75 (9), on the other hand, appear to include the change to any use " begun otherwise than in accordance with permission granted in that behalf by or under the interim development order "—provided only that there was a resolution to prepare a scheme. Thus development is apparently covered which was outside planning control when it was carried out, and was only not the subject of an application for interim permission because there was no reason to ask for permission. *Prima facie* this is as unreasonable as the case of the developer who did ask for permission : and it will be noted that in relation to this case abandonment of the definition of " interim development order " is of no assistance, since it is interim permission under the 1922 or 1925 Act we are contemplating. Perhaps the best answer to this difficulty lies in consideration of the effect upon such development of the 1932 Act. A developer who obtained interim permission under the 1922 or 1925 Act was treated by the 1932 Act as having carried out permitted development; but a developer who did not obtain permission was given no protection, even though the scope of planning control had been widened : any existing resolution [2] became a resolution under the 1932 Act, and so could result in a scheme under the 1932 Act which could be enforced against pre-1932 as well as against post-1932 development. Thus it is not so unreasonable that planning control should now be enforceable against development not within the scope of control when it took place : it has been so enforceable (by the cumbrous machinery of the 1932 Act) ever since 1933. It should be noted, however, that in so far as this sort of contravention derives from s. 75 (9), development before 1925 may well not be covered : see above as to the definition of " planning scheme ".

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[2] An existing operative scheme, on the other hand, continued to operate under the 1925 Act.

Appeals Against Invalid Enforcement Notices

By Harold J. J. Brown, Barrister-at-Law

An enforcement notice under the Town and Country Planning Act, 1947, may be invalid for any of a number of reasons. It may not comply with the requirements of the Act as to service because it has not been served on the proper person or within the proper time or in the manner prescribed by s. 105 of the Act, and in any of these cases the notice will not come within the opening words of s. 23 (2), a " notice served under this section ", and hence not be an " enforcement notice " at all. Or a notice purporting to be an enforcement notice may be invalid for lack of form, for instance because it does not specify a period after which it is to take effect, as required by s. 23 (3).

In his article on " Appeals against enforcement notices ",[1] Mr. Megarry discusses among other matters the question whether a Court of summary jurisdiction may, on an appeal to the Court under s. 23 (4) of the Act of 1947, quash an invalid notice. He states that the argument of the local planning authority in the *Shoreham Houseboats Case* was that once the Court were satisfied that the notice was invalid, they lost any power to quash it and could only dismiss the appeal. This argument derives from the wording of paras. (*a*) and (*c*) of s. 23 (4), which direct the Court to dismiss the appeal in every case except where satisfied that planning permission for the development was granted or not required, and Mr. Megarry's own conclusion (para. (*d*) at p. 514) is that: " If Petty Sessions comes to the conclusion that an enforcement notice is bad, s. 23 (4) appears to direct the Court to dismiss the appeal ".[2]

It seems to follow from this argument that whatever other remedies may be available to a person upon whom an invalid notice is served, if he cannot bring his case within the grounds specified in para. (*a*) of s. 23 (4), upon which the Court may quash the notice, he is wasting his time and money if he appeals to the magistrates, since they can only dismiss his appeal. Although the argument merits great respect, this view of the situation appears to be incomplete. The right of appeal under s. 23 (4) is given only to a " person on whom an *enforcement* notice is served ", the right is a right to appeal " against the notice " and the jurisdiction of the Court, to quash the notice under para. (*a*) or to dismiss the appeal under para. (*c*), arises only " on any such appeal ". If there has been no " enforcement notice "—*i.e.*, no notice served under s. 23—there can be no right of appeal and the Court can have no jurisdiction.

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[1] *Ante*, p. 506.

[2] This conclusion receives support from the case referred to in the Correspondence published at p. 663, *post*.

There seems to be no reason to suppose that the appellant has, merely by bringing his appeal, waived any objection to the jurisdiction of the Court. He should, it is submitted, be careful in drafting his complaint to the Court of summary jurisdiction to ensure that it does not admit the validity of the notice and that it raises the issue of the Court's jurisdiction on the face of the complaint, any further objections to the notice being made without prejudice to the contention that the notice is invalid and the Court has no jurisdiction. But even if this is not done, it is submitted that it will be open to the appellant to raise the question at the commencement of the hearing. Most of the authorities having any bearing on this question are rather ancient, but the following passage is from a judgment of Devlin, J., in a recent Rent Acts case before the Divisional Court (*R.* v. *Fulham, Hammersmith and Kensington Rent Tribunal, ex p. Zerek*, [1951] 2 K. B. 1 at p. 10):

> " When at the inception of an inquiry by a tribunal of limited jurisdiction, a challenge is made to their jurisdiction, the tribunal have to make up their minds whether they will act or not, and for that purpose to arrive at some decision on whether they have jurisdiction or not. If their jurisdiction depends upon the existence of a state of facts, they must inform themselves about them, and if the facts are in dispute reach some conclusion on the merits of the dispute. If they reach a wrong conclusion, the rights of the parties against each other are not affected. For, if the tribunal wrongly assume jurisdiction, the party who apparently obtains an order from it in reality takes nothing. The whole proceeding is, in the phrase used in the old reports, *coram non judice* ".

The question whether the Court has jurisdiction on a s. 23 appeal is a question of law—whether the case falls within s. 23—depending on certain facts which include the question whether the appeal is made by a person aggrieved by an enforcement notice served under s. 23. In the case of a notice which purports to be an enforcement notice but which in fact is not because it does not comply with the requirements of s. 23, it is submitted that the Court must, if their jurisdiction is challenged, decline jurisdiction and refuse to decide the case either by quashing the notice or dismissing the appeal. Further, that as the question of jurisdiction is a question of law, a Court of summary jurisdiction could be required to state a case on this question for the opinion of the High Court.

If the Court of summary jurisdiction hold that they have no jurisdiction, or if the High Court so hold on an appeal by way of case stated, although the appeal against the notice will not have resulted in form in a victory for the appellant (and the Court will have no power to award costs against the local authority), it is extremely unlikely that the local authority will be prepared to take any further action in pursuance of the notice.

If the Court of summary jurisdiction decide that they have jurisdiction (as was apparently the case in *Stamp* v. *Bognor Regis Urban District Council* (1949), 1 P. & C. R. 220) it will still be possible for subsequent proceedings to be taken in the High Court, not only by appeal by way of case stated but also for an injunction to restrain any threatened further steps by the local authority, or possibly for an order of certiorari or prohibition in respect of the magistrates' excess of jurisdiction.

With the possibility of such further proceedings in mind, a local authority who have purported to serve an enforcement notice which clearly is invalid may be prepared, on an appeal to the magistrates against the notice, to come to terms with the appellant and be prepared to say that the notice should, by agreement, be quashed by the Court—possibly with an award of costs to the appellant. It is submitted that if the notice is invalid and the question of the Court's jurisdiction has been raised on the appeal, strictly speaking the Court has, as suggested above, no jurisdiction to quash the notice. But faced with agreement between the parties, the Court may well feel disposed to accept that agreement and to give effect to it so far as it lies within the power of the Court so to do.

In the case of an invalid notice it is an interesting question whether the clerk to the local authority, or other person responsible for the notice being issued, may not be liable in law for any consequent loss to the person upon whom it was served. There is authority for the proposition that the liability of an agent for breach of warranty of authority is not confined to liability in respect of a warranty of authority to contract—see *Starkey* v. *Bank of England*, [1903] A. C. 115. There can be little doubt that in the case of an invalid enforcement notice there has been a representation of authority by the person who has signed it, for in the words of the Earl of Halsbury, L.C., in *Starkey's Case* it is " a formal document intended to be acted upon, which, upon the face of it, purports to be a representation of authority by the persons whose signatures purport to be appended thereto ".

It should perhaps be added that the decision in *Perrins* v. *Perrins*, [1951] 2 K. B. 414, 1 P. & C. R. 457, does not appear to conflict in any way with the views expressed above. The enforcement notice in that case was not challenged on the grounds of invalidity for want of proper form or service but (on a prosecution under s. 24 (3) for non-compliance with the notice) only on grounds within para. (*a*) of s. 23 (4) which could have been raised on an appeal to the magistrates under that subsection, *viz.*, that there had been no development since July 1, 1948, and therefore that no permission was required in respect of the development to which the notice related. The statement of Lord Goddard, C.J., that " it is not for the justices, when a person is prosecuted for the offence of contravening an enforcement notice which has not been appealed, to go into the question whether the notice was a good or a bad one " refers to an " enforcement notice " and not, it is submitted, to a purported enforcement notice which in fact is invalid and therefore a nullity. The notice to which the statement refers is a notice which " has become effective " and against which a person has had an opportunity of appealing—which, it is submitted, would not be the case where the notice was invalid.

Development in Barsetshire

The Earl of Barset's claim against the global sum; development charge on partial development of his Lordship's estate.

The following conversation may be assumed to have taken place between S., a surveyor, and D.V., the district valuer, during an informal discussion on development charge.

S. I've come to see you about your proposed development charge of £3,750 on the five acres we are building on at Waggling Parva. It works out at £750 an acre, and I thought the highest development value you were suggesting for this particular parcel of land in respect of the claim against the £300,000,000 was £150 an acre.

D.V. That is quite true, but the present valuation for development charge is an entirely different one from that which I had in mind for the Part VI claim.

S. Surely what is sauce for the goose is sauce for the gander?

D.V. Not in this case. You see, since the appointed day the Council have built houses on the adjoining land and brought the sewer right up to your boundary so that you have no difficulty with access or drainage.

S. But at the appointed day everyone anticipated that these Council houses would be built and the roads and sewer put in.

D.V. I am glad to hear you speaking of what people were anticipating on the appointed day; the other day you said the value ought to be governed by the expectations current immediately before January 7, 1947.

S. Well, honestly I still think that's the right interpretation, but as you are willing to use the former basis, which gives me about a year and a half less to defer my land, I am accepting your gift horse. But I still reserve the right to look it very closely in the mouth in certain circumstances, *e.g.*, when the town planning position has been radically changed between January 7, 1947, and the appointed day.

D.V. No matter which is the correct date for claim, in this particular case for the purpose of development charge I am valuing the land for immediate development, with roads and sewers nearby ready for connection. As a matter of fact, I did not envisage, in making my valuation for claim, that development would take place so rapidly as it has on this particular piece of land. I thought the land nearer the village would go first—your claim area No. 1.

S. Even so, you have put the development charge for the present land—which is claim area No. 5—at £750 an acre against a proposed £600 claim for No. 1.

D.V. Yes, but you must remember there is a slightly different statutory basis for the valuations for claims under Part VI of the 1947 Act and development charge under Part VII. Apart from that, your area No. 1 was under requisition at the appointed day so that I had in any case to defer it until you expect to get the land derequisitioned—the land you are now building on is being valued for development charge as immediately ripe for development.

S. That doesn't account for the difference in the case of area No. 5 itself between £750 an acre development charge and £150 an acre claim.

D.V. Oh yes it does! In arriving at the £150 an acre I anticipated, as at the appointed day, that it would be at least ten years before the land was developed and that even then considerable expenditure would be incurred in draining it.

S. Now that events have shown you to be wrong, are you willing to revise your suggested £150 an acre claim for area No. 5?

D.V. To some extent, yes, but if I adjust area No. 5 upwards I shall have to make the corresponding adjustment downwards in area No. 1 and the others.

S. That's hardly fair, is it?

D.V. I think it is. I had to estimate in valuing the claims where your development would begin. I thought in area No. 1, and this was to some extent borne out by the fact that you had put the highest unrestricted value per acre on that land. If area No. 5 is to go to the top, area No. 1 cannot be the first in the queue. It may not go to the bottom, a place held by No. 7 hitherto, but it will have to go to second place, and No. 2 to third place and so on. In other words I am not going to give you a bigger total claim because in the event No. 5 has been developed before No. 1.

S. As you know, I am in any case far from satisfied with the figures you suggest for the total claim against the global sum.

D.V. If you do not agree to my valuations on the separate parcels I shall recommend the Central Land Board to amalgamate all the Earl's claims. He is claiming on 200 acres of land, and you have split that up into seven separate units.

S. Listen to what the Board say in their annual report about that :—

> " 11. Section 60 (4) provides that a claim may be made in respect of such land as the claimant thinks fit, and that different claims may be made in respect of the interest of the same person in different parcels of land. Under the proviso to the subsection the Board ' may direct that any two or more claims in respect of the interest of the same person in different parcels of land shall be dealt with together and treated as if they were one claim in respect of the interest of that person in the whole of the land included in the claims '. In other words the Board can aggregate claims in the same ownership.
>
> There are certain cases where aggregation is to the advantage of the claimant, and the Board are prepared to exercise their power in these cases on application.
>
> In other cases the Board exercise their power sparingly and only where separate claims would in their opinion produce an artificially inflated development value. They do not use their power where the effect would be to exclude a claim under the provisions of section 63 for the exclusion of small claims ".

D.V. In this case you are trying to get an artificially inflated claim by splitting the land up to hide the fact that you are throwing 200 acres on the market at once.

S. If it comes to that all the land in England was thrown on the market on July 1, 1948, by virtue of these claims but I don't think in other cases you are allowing that to influence the valuations. For instance, there was that land at Waggling Magna, which adjoins the Earl's land. In that case we agreed a development value of £750 an acre for fifteen acres, and you did not then say " your land won't be built on because the Earl of Barset on July 1, 1948, threw 200 acres nearby on to the market ". Supposing there had been seven claimants owning the Earl's seven parcels of claim ?

D.V. Then there would be a different set of circumstances.

S. It seems to me that you are admitting that if the Earl's land had been in the hands of seven different owners it would have had a different value from that which it had in one ownership. Except for possibly a small quantity allowance I think that is a fallacious argument. The fact is that on July 1, 1948, there was so much land in the area, most of it owned by the Earl and a little not. Some of the land, for physical and geographical reasons or because of its town planning zoning was more suitable for development than the rest. From the land which the Earl owns—in all about 6,000 acres—I selected seven parcels which I thought were sufficiently ripe to warrant a claim. If I had selected only area No. 1 you could still have said "There are at least six other areas of land suitable for building with which the land for which you have made a claim will be in competition".

D.V. That the flooding of the market usually reduces the price is well recognised. In fact you will recall that in death duty valuations the principal value is not to be reduced because all the land is thrown on the market at once (Finance (1909–10) Act, 1910, s. 60 (2)). To prevent the Earl's claims being artificially inflated I shall recommend amalgamation of the seven separate areas as one unit of claim.

S. Since you have mentioned death dutes I think you have overlooked *Ellesmere* v. *Inland Revenue Commissioners* ([1918] 2 K. B. 735) where I think it was held that the estate must be suitably lotted to produce the best price. All that I have done with the Earl's land is to select 200 acres and divide it into seven reasonably sized lots which in my opinion would have sold readily at the appointed day as potential building land. If I had divided the Earl's total holding of 6,000 acres into 50,000 separate plots and lodged a claim for each you might have had some cause for complaint.

Progress of Development Plans

(Continued from p. 598, ante)

The following is a continuation of the list of plans submitted to date (October 19, 1951). Any objections should be sent to the Secretary, Ministry of Local Government and Planning, Whitehall, London, S.W.1, before the closing date indicated.

8. Wigan County Borough Council.
   Local inquiry: October 9, 1951.

9. Blackburn County Borough Council.
   Local inquiry: November 13, 1951.

10. Kingston-upon-Hull County Borough Council.
    Local inquiry: November 6. 1951.

11. West Sussex County Council (Northern Section: Horsham U. D., Chanctonbury R. D., Horsham R.D., Midhurst R. D., Petworth R. D.).
    Local inquiry: October 24, 1951.

12. Oldham County Borough Council.
    Local inquiry: October 31, 1951.

13. Montgomeryshire County Council.
    Hearing: December 4, 1951.

15. Preston County Borough Council.
    Local inquiry: October 30, 1951.

17. South Shields County Borough Council.
    Local inquiry: November 14, 1951.

18. Rochdale County Borough Council.
    Local inquiry: November 7, 1951.

21. Carlisle County Borough Council.
Local inquiry: November 20, 1951.

22. Gateshead County Borough Council.
Local inquiry: November 7, 1951.

23. Sunderland County Borough Council.
Local inquiry: November 21, 1951.

25. Croydon County Borough Council.
Local inquiry: November 20, 1951.

26. Berkshire County Council.
Local inquiry: November 20, 1951.

29. Lincoln County Borough Council.
Local inquiry: December 12, 1951.

31. Worcester County Borough Council.
Local inquiry: November 28, 1951.

33. Merioneth County Council.
Submitted to Minister: August 30, 1951.
(London Gazette, October 16, 1951.)
Closing date for objections: November 30, 1951.[1]

36. Gloucestershire County Council.
Submitted to Minister: September 28, 1951.
(London Gazette, October 2, 1951.)
Closing date for objections: November 30, 1951.

37. Exeter County Borough Council.
Submitted to Minister: September 27, 1951.
(London Gazette, October 5, 1951.)
Closing date for objections: November 30, 1951.

38. Canterbury County Borough Council.
Submitted to Minister: October 5, 1951.
(London Gazette, October 12, 1951.)
Closing date for objections: December 1, 1951.

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[1] This is an extended date.

39. Leeds County Borough Council.
Submitted to Minister : October 11, 1951.
(London Gazette, October 16, 1951.)
Closing date for objections : November 28, 1951.

40. East Suffolk County Council.
Submitted to Minister : October 5, 1951.
(London Gazette, October 12, 1951.)
Closing date for objections : December 3, 1951.

Statutory Instruments

The Forestry (Felling of Trees) Regulations, 1951

(SI 1951, No. 1726)

[*Summarised*]

Under subss. (2) and (6) of s. 13 of the Forestry Act, 1951,[1] where the Forestry Commissioners propose to grant a licence in respect of the felling of trees for which consent is required under a tree preservation order, or where they propose to give directions requiring the felling of such trees, they are required to give notice of the proposal to the authority by whom the order was made. That authority then have a right to object to the proposal within a "specified period" after the receipt of the notice. Reg. 13 of the above regulations fixes this period as one month. The Regulation came into operation on October 1, 1951.

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[1] *Ante*, pp. 539–540. See also p. 656, *post*.

Ministerial Information and Circulars

Tree Preservation Orders

In Ministry Circular No. 60/51, dated October 5, 1951, the attention of local authorities is drawn to s. 13 of the Forestry Act, 1951,[1] and it is indicated that the Memorandum on the Preservation of Trees and Woodlands which was enclosed with Circular No. 66 [2] will shortly be reissued in revised form.

Attention is also drawn to the following points:

The Act of 1951 provides that, subject to certain exceptions,[3] no person should fell any growing trees, except under a licence granted by the Forestry Commission. The Act also empowers the Commission, in granting licences to fell trees, to impose conditions for securing the restocking or stocking with trees of the land on which the felling takes place (or on such other land as may be agreed upon between the Commission and the applicant) and the maintenance of such trees in accordance with the rules and practice of good forestry for a period not exceeding ten years.

In order to avoid duplication of applications s. 13 of the Act provides in effect that where a licence is required under that Act for the felling of any trees subject to an Order, an application for such a licence will be treated as an application for permission to fell under the Order. Direct application to the local planning authority will, therefore, be appropriate only where a licence is not required under the Forestry Act—*i.e.*, in the case of trees in the administrative county of London (to which the Act does not apply), or in respect of operations such as topping and lopping and those felling operations included in the list of exceptions.[3] All other applications will be made to the Forestry Commission in the first instance.

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[1] *Ante*, pp. 539–40. See also p. 655, *ante*.

[2] *Encyclopaedia of the Law of Planning, Compulsory Purchase and Compensation*, Vol. I, p. 1315.

[3] A licence is not required under s. 2 of the Forestry Act, 1951, for the following operations (Regulations may be made by the Commissioners under s. 2 (3) of the Act, providing for additional exceptions, and under s. 2 (4) for the modification of existing exceptions):

(a) In respect of the topping or lopping of trees or the trimming or laying of hedges;

(b) In respect of the felling of trees of a diameter not exceeding three

The application form [4] must be completed in triplicate in the case of trees which are the subject of a Tree Preservation Order and forwarded to the Forestry Commission Conservator for the district concerned. If the Commission propose to refuse a licence, the Conservator will inform the applicant accordingly and will forward a copy of the application for record purposes to the authority who made the Order. The remedy for any person aggrieved by the refusal will lie under the Forestry Act, 1951, and not under the provisions of the Tree Preservation Order. In other cases, the Forestry Commission will forward a copy of the application to the authority who made the Order and state how they propose to deal with it. If the authority agree with the Commission's proposals, they should inform the Conservator accordingly and enter the decision in the register of applications for consent under the Order. The Conservator will communicate the decision to the

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inches or, in the case of coppice or underwood, of a diameter not exceeding six inches;

(c) In respect of the felling of any fruit trees or any trees standing or growing on land comprised in an orchard, garden, churchyard or public open space;

(d) In respect of the felling of any tree for the prevention of danger or the prevention or abatement of a nuisance;

(e) In respect of the felling of any tree in compliance with any obligation imposed by or under any Act of Parliament, including the Forestry Act, 1951;

(f) In respect of the felling by, or at the request of, an Electricity Board of any tree which obstructs the construction by the Board of any main transmission line or other electric line, or interferes or would interfere with the maintenance or working of any such line belonging to the Board;

(g) In respect of the felling by any person of trees of a diameter not exceeding four inches on land in his occupation or in the occupation of any tenant of his, where the felling is carried out in order to improve the growth of other trees;

(h) In respect of the felling of any tree where the felling is immediately required for the purposes of carrying out development authorised by planning permission granted or deemed to be granted under the Town and Country Planning Act, 1947;

(i) In respect of the felling by any person of trees on land in his occupation or in the occupation of any tenant of his, so long as:—

(*i*) the aggregate cubic content of the trees which are felled by that person without a licence (exclusive of trees, the felling of which without a licence is authorised by any other provision of the Forestry Act, 1951) does not exceed 825 cubic feet in any quarter; and

(*ii*) the aggregate content of the trees so felled which are sold by that person, whether before or after the felling (exclusive as aforesaid), does not exceed 150 cubic feet in any quarter, or such larger quantity as the Commissioners may in any particular case allow.

[4] Copies of this form (application for licence—G. 11) will be supplied free of charge to any person on application to the Conservator.

applicant, and again the remedy for any person aggrieved by the decision will be under the Forestry Act and not under the provisions of the Tree Preservation Order. If the local planning authority disagree with the Commission's proposals, they should inform the Conservator of their objections, and if within a month of receiving notice of the Commission's proposals they have not withdrawn their objections, the Conservator will forward the application to the Minister of Local Government and Planning, who will treat the application as if it had been made to him in the first instance under s. 15 of the Town and Country Planning Act, 1947, as applied by the Tree Preservation Order. In such a case, if either the applicant or the local planning authority so desire, an opportunity will be afforded to them of appearing before and being heard by a person appointed by the Minister for that purpose. If the Minister decides to consent to the felling, no licence under the Forestry Act will be required for the felling of the trees concerned. If the Minister decides to refuse consent, the provisions of the Tree Preservation Order as to compensation will apply.

Where the Forestry Commission decide not to deal with an application themselves, and in accordance with s. 13 (4) of the Forestry Act, 1951, refer it to the local authority who made the Order to be dealt with by them, the application should then be treated as an application made to the local planning authority for consent under the Order, and no licence will be required under the Forestry Act for the felling of any trees to which the application relates.

Applications for consent (where necessary under an Order) to top, lop or fell trees for which a licence to fell is *not* required under the Forestry Act, 1951, will be made direct to the local planning authority as at present and should be dealt with accordingly.

S. 7 of the Forestry Act, 1951, enables the Commission to require trees to be felled when they consider it expedient to do so. Where the Commission propose to give directions to fell trees subject to a Tree Preservation Order they will first notify the authority who made the Order. If, within one month after the receipt of such notice the local authority object and do not withdraw their objection, the Commission may not give the directions without the consent of the Minister of Local Government and Planning. (See s. 13 (6) of the Act of 1951.)

It is important that local planning authorities should deal promptly with notifications by the Forestry Commission of their proposal to grant a felling licence, and local planning authorities are asked to let the Conservator have their views on his proposals within fourteen days of their receiving them, if possible.

Notes of Cases *

HIGH COURT: KING'S BENCH DIVISION

Enforcement Notice Where 1946 Act Determination

D'Alessio and Another v. Enfield U. D. C. (October 4, 5, 1951). This was an appeal by case stated against a decision of the Enfield magistrates.

A scrap-metal business, involving the collection, sorting, and cutting up of scrap metal, had been commenced on certain land in June, 1931, and carried on ever since that date. In September, 1945, the appellants had, without interim development permission, commenced to use a shed on the land for the manufacture of small metal fittings. On June 30, 1948, the Minister of Health, on appeal, had determined under s. 2 of the Building Restrictions (War-Time Contraventions) Act, 1946, that the use of the shed failed to comply with planning control but, subject to two conditions, "shall be deemed to comply with planning control until December 31, 1949, and no longer". On February 2, 1951, the respondent urban district council served on the appellants an enforcement notice giving them notice that "under s. 23 and s. 75 of the Town and Country Planning Act, 1947", they were required to discontinue the use for manufacturing small metal fittings within twenty-eight days.

On an appeal against this enforcement notice to the Court of summary jurisdiction, under s. 23 (4) of the Act of 1947, the magistrates held that s. 75 of that Act was the applicable section, that they had no power to quash the notice, and that the appeal should be dismissed.

The Divisional Court of the King's Bench Division (Lord Goddard, C.J., Hilbery and Pilcher, JJ.) held that the time limit imposed by the determination under the Act of 1946 was a condition specified in that determination, notwithstanding that it was not expressed to be a condition. In view of the 1946 Act determination the case fell within s. 76 (5) of the Act of 1947, which applied the provisions of s. 76 and excluded the provisions of s. 75 in relation to the use.

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* Full reports of these cases will be published in *Planning and Compensation Reports.*

A contention for the respondent council that the case was within s. 75 (2), being within para. (*a*) for the period up to December 31, 1949 (the time limit under the 1946 Act determination) and thereafter within para. (*b*) of that subsection, was not accepted by the Court.

Since the manufacture of small metal fittings on these premises was not a use to which s. 75 of the Act applied, the Court of summary jurisdiction had power to quash the enforcement notice and should have set it aside.

The case was accordingly remitted to the magistrates.

H. J. J. B.

Enforcement Notice—Model Village

Bucks County Council v. Callingham and Clarke [1] (October 11 and 12, 1951). This was an appeal by way of case stated from a decision of the Beaconsfield magistrates.[2] An enforcement notice requiring the removal of a model village consisting of buildings, some 2 feet and some 4 feet high, with a model railway and racecourse, which had been open as a public exhibition, had been quashed by the magistrates, who held that the development was not within s. 75 of the Act of 1947.

A resolution of intention to prepare a planning scheme covering the land in question had been adopted with effect from September 30, 1929. The magistrates decided that the present use of the land had been established by August 1, 1929, and that although the model village had been in the course of development in 1929 and 1930, it was necessary to consider the buildings as a whole and not the dates of erection of individual models.

The Divisional Court of the King's Bench Division (Lord Goddard, C.J., Hilbery and Pilcher, JJ.) held that the removal of any buildings erected or work done on the land before September 30, 1929, the date of the resolution under the Act of 1925, could not be required by the enforcement notice, since they were not works to which s. 75 of the Act of 1947 applied.

With regard to all models which had been erected after September 30, 1929, the Court held that as no interim development permission had been obtained, they had been erected in contravention of previous planning control under s. 75 (9) of the Act of 1947, and could therefore be the subject of enforcement proceedings; it was necessary for each model to be considered individually, and the case should accordingly be remitted to the magistrates.

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[1] An article on questions raised by this case appears at p. 642, *ante*.

[2] Noted *ante*, p. 297.

The Court did not accept a contention of counsel for the owners of the land to the effect that in determining whether interim development control was applicable under the Act of 1925 or the Act of 1932, the expression " building operations " (in s. 4 of the 1925 Act, and comprised in " development " in s. 10 of the 1932 Act—see the definition in s. 53) should be construed by reference to the type of development intended to be controlled by the Act. The expression " buildings "—which under the Act of 1932 " includes structures and erections "—must be given its ordinary meaning, and the models in this case were buildings and subject to interim development control.

A further contention of counsel for the landowners, that all models erected before April 1, 1933, were not subject to the enforcement provisions of s. 75 of the Act of 1947, having regard to para. (*a*) of s. 75 (9) and the definition of " interim development order " by s. 119 (1) as meaning an order under s. 10 (1) of the Act of 1932, was also rejected by the Court.[3]

Para. (*a*) of s. 75 (9) required works carried out without interim development permission under the Act of 1932 to be deemed to have been carried out in contravention of previous planning control, but the wording of this paragraph did not say that works carried out before the Act of 1932 were not in contravention of previous planning control.

H. J. J. B.

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[3] The interpretation of para. (*a*) of s. 75 (9) rejected by the Divisional Court in this case was an interpretation which had been accepted as the correct one by the Minister of Local Government and Planning—see [1951] J. P. L. 402–4.

The Divisional Court accepted the argument of counsel for the respondents that, having regard to the definition in s. 119 (1) of the Act, " interim development order " in s. 75 (9) could not refer to any order which came into operation before April 1, 1933. But they rejected his further argument that this necessarily excluded from s. 75 development carried out without planning permission before that date. They accepted the argument of counsel for the appellants that on a literal reading of s. 75 (9) the respondents, not having obtained planning permission under an order under the 1932 Act, had committed a breach of previous planning control.

It has hitherto been widely assumed that s. 75 (9) contains an exhaustive definition of the limits of pre-1947 Act development in respect of which enforcement proceedings may be taken, but under this decision of the Divisional Court such an assumption is incorrect.

PETTY SESSIONS

Enforcement Notices

Foster Clark v. East Suffolk County Council

A report of this case is not yet available, but attention is drawn to the letters from Percy Lamb, Esq., K.C., and L. G. Searman, Esq., of counsel, *infra.*

Correspondence

Section 23

TO THE MANAGING EDITOR,
JOURNAL OF PLANNING LAW.

Sir,

I think you may be interested to hear that the Appeals Committee of Suffolk Quarter Sessions, sitting on September 21, 1951, at Ipswich, held that an appellant against an enforcement notice under s. 23 of the Town and Country Planning Act, 1947, cannot raise, in that court, an objection that the notice is of no legal effect because it does not specify the time when it is to become effective. In other words—no point may be raised other than those referred to in s. 23 (4) and therefore, if proceedings are taken later under s. 24 the appellant is not precluded from contending that the notice is bad for reasons which could not be inquired into on appeal. See and compare your article in the September issue,[1] and *Perrins* v. *Perrins,* [1951] 2 K. B. 414.

The Suffolk Court consisted of Hugh Boileau, Esq., Sir Cyril Atkinson and Judge Harold Whitmee and two others. The case was *Foster Clark* v. *East Suffolk C. C.*

Yours faithfully,

PERCY LAMB.

Temple, E.C.4.

TO THE MANAGING EDITOR,
JOURNAL OF PLANNING LAW.

Sir,

I think you will be interested to know that another Court of Quarter Sessions has decided that the peremptory wording of s. 23 (4) of the Town and Country Planning Act, 1947, does not permit them to inquire into the technical validity of an enforcement notice. In the case of *Foster Clark* v. *East Suffolk County Council* a very strong Court, which included Mr. Hugh Boileau as chairman and Judge Whitmee and Sir Cyril Atkinson as members, agreed with the submission made on

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It would seem to follow from this decision that para. (*a*) of s. 75 (9) of the Act is redundant. H.J.J.B.

[1] [1951] J. P. L. 506.

behalf of the county council and conceded by Mr. Percy Lamb, K.C., for the appellant, that a court of summary jurisdiction if not satisfied as to the matters contained in sub-s. (4) (*a*) and (*b*) has no option but to dismiss the appeal.

It would appear, therefore, both on principle and upon construction of s. 24, that the appropriate time to make technical objections to an enforcement notice is either in an action for trespass against a planning authority for entering premises under s. 24 (1) or in criminal proceedings instituted by the planning authority under s. 24 (3).

It is surely high time that s. 23 and enforcement notice procedure generally were straightened out by amending legislative action. I would suggest that if s. 23 is to be amended the object of the amendment should be to ensure that all objections of whatever character to the enforcement notice should be taken at the time of the appeal against the notice and before it comes into effect.

Yours truly,

L. G. SCARMAN.

Temple, E.C.4.

Protected Tenants and Compulsory Purchase

TO THE MANAGING EDITOR,
JOURNAL OF PLANNING LAW.

Sir,

I have read with interest the article by Mr. R. D. Stewart-Brown on the above subject in your issue for October.[2] The author has, however, omitted to deal with the position of traders who are already either statutory tenants of rent-controlled premises or who, though still contractual tenants, enjoy the potential protection of the Rent Acts, and on whom notice to treat has been served.

Presumably such tenants are entitled to compensation for disturbance, but Mr. Stewart-Brown's views on the point would be welcome.[3]

Yours faithfully,

M. S. PAINE,

Borough Valuer.

Metropolitan Borough of Paddington.

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[2] [1951] J. P. L. 573.

[3] We hope to publish a reply to this letter in our next issue.

Notes of Planning Decisions*

Mooring of Houseboats

The following is an extract from the letter of the Minister of Local Government and Planning dated September 3, 1951, following an appeal against the refusal of the Chertsey Urban District Council to permit the mooring of six houseboats in the Basingstoke Canal at Woodham, New Haw.

" The Minister understands that the canal has not been abandoned and that therefore rights of navigation still exist. He is advised that in these circumstances the mooring of houseboats in the canal cannot be deemed to involve development within the meaning of the Act and consequently that no permission is required. This letter is issued by the Minister as his formal decision on the appeal.

I am, however, to stress that this decision relates only to the moorings of houseboats, as distinct from the construction of landing stages or other associated works, and any development by way of ancillary building on the bank, such as the construction of landing stages, would require permission in the normal way."

[By courtesy of the Clerk of the Chertsey Urban District Council.]

Cutting Up Firewood With Circular Saw

The following is an extract from the letter of the Minister of Local Government and Planning dated July 27, 1951, dismissing an appeal against the refusal of the Swindon Borough Council to consent to the use of a hut, 20 feet long by 13 feet wide, at the rear of 29 Islington Street, Swindon, for the purpose of cutting up firewood with a circular saw.

" The appellant is by trade an oil and hardware retailer, and uses the premises, under a planning permission granted in 1949, as a garage and store from which he distributes his goods by motor car and trailer. In addition to selling firewood as part of this business, he also supplies it under contract to other purchasers. Previously, the wood used has been cut up elsewhere, but the appellant has lost possession of the premises concerned, and now wishes to carry on the work in the hut.

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* The Managing Editor desires to express his thanks to those who have been kind enough to send to this Journal particulars of planning decisions, and hopes that he will continue to receive particulars of planning decisions which involve points of general interest.

The Minister has reached the conclusion that the cutting up of old wood into firewood cannot be regarded as ancillary to the use of the building as a store, at any rate when conducted on the scale proposed. It would amount to the introduction of an industrial use and would in his view constitute a material change of use for which planning permission is required. On the merits of the case, he notes that the building is entirely surrounded by residential properties and is only 25 feet from the back of the nearest house. The noise caused by the saw must seriously inconvenience nearby residents, and although Mr. Allen has expressed his willingness to comply with any reasonable restrictions, the Minister sees no reason to dissent from the Council's view that the proposed use, in such close proximity to houses, would be very undesirable."

[By courtesy of the County Planning Officer, Wiltshire County Council.]

Car Park as Storage Space for Cars

The following is an extract from the letter of the Minister of Local Government and Planning dated June 30, 1951, dismissing an appeal against the refusal of the Coventry City Council to permit the use of land adjoining the Kenpas swimming pool as a park for motor cars collected from a Coventry factory and awaiting shipping space for export.

"The land is being used for a purpose ancillary to the swimming pool, namely, the accommodation of the cars of patrons. In the Minister's opinion, its use for business parking or storage would involve a material change and constitute development. A residential area is developing around the swimming pool and the Council consider that this business use would conflict with the character of the neighbourhood and prejudice its future development. They fear that during the summer, the site would frequently be inadequate for both purposes and that, particularly during the winter, vehicles stored unprotected would be difficult to start, and that the noise and fumes produced during warming up would be objectionable. They say that they can make suitable land available at a reasonable rental in their industrial sites.

The Minister agrees with the Council that the proposed use of land in a residential area is undesirable and unnecessary. He accordingly dismisses the appeal."

[By courtesy of the Town Clerk, Coventry.]

Use of Former Electricity Showroom as Retail Furniture Shop: Application of S. 12 (5)

The following is an extract from the letter of the Minister of Local Government and Planning dated September 7, 1951, following an appeal against the decision of the Swindon Borough Council that the use of the premises at Regent Circus, Swindon, for the purposes of a retail shop for the sale of furniture and household goods would involve a material change in the use of the building and would so constitute development for which permission is required under Part III of the Act of 1947.

" The appeal premises were erected, and until June, 1943, used, by the Swindon Corporation as retail showrooms in connection with their electricity undertaking. From June, 1943, until August, 1943, they were used as an office by the Ministry of Labour; from August, 1943, to June 1946, they were used as a junior library by the Swindon Corporation; and thereafter remained vacant until the Islington Furnishing Co., Ltd., entered into occupation in December, 1950.

The Council submitted that in cases where buildings are unoccupied on the appointed day s. 12 (5) (*c*) applies for the purpose of deciding the ' existing use ' on that day. Since the building was in fact last used as a junior library they concluded that by applying s. 12 (5) (*c*) permission would not be required for a resumption of the use of the building as a junior library. They regarded that use as being materially different from that as a retail furniture shop. They considered that the provisions of s. 12 (5) (*a*) were not applicable because on the appointed day the building was in fact unoccupied. The appellants contended that s. 12 (5) (*c*) of the Act was merely declaratory and that it did not necessarily follow that where the last use of property vacant on the appointed day was not the normal use, resumption of the normal use must constitute a material change of use. They submitted that any use of the property for purposes other than those of the Electricity Authority should be considered only as a temporary use and that they were merely resuming the normal use.

The Minister agrees with the Council that a change of use from library to shop is a material change, and as such would normally require planning permission. He finds it unnecessary to decide whether the library use was a temporary use or not, since the facts of this case bring it within para. (*c*) of s. 12 (5) and not within para. (*a*). In determining, however, for the purposes of para. (*c*), the purposes for which land was last used, proviso (i) requires that no account be taken of any use of the land begun in contravention of previous planning control within the meaning of s. 75 of the Act. By that section a use of land is deemed to have been begun in contravention of previous planning control if begun while the land was subject to a resolution to prepare a planning scheme, otherwise than in accordance with permission granted by or under the interim development order.

A resolution to prepare a scheme for the area including the appeal premises took effect on December 4, 1928, and the Council became the interim development authority. The premises were therefore subject to interim development control in 1943 when their use as offices, and subsequently as a library, began; and since at that time neither the Crown nor the interim development authority were granted permission for the development in question by or under the interim development order, both uses were begun in contravention of previous planning control within the meaning of s. 75. It follows that for the purposes of s. 12 (5) (*c*) these two uses must be disregarded, and the last use of the premises was their use as an electricity showroom for which they were appropriated in 1933; and since use as an electricity showroom and use as a retail furniture shop both fall within Class I specified in the Town and Country Planning (Use Classes) Order, 1950, planning permission is not required for the institution of the latter use.

The Minister therefore determines that the use of the premises as a shop for the sale of furniture and household goods would involve development within the meaning of s. 12 of the Town and Country Planning Act, 1947, but that by reason of para. (*c*) of subs. (5) of that section, planning permission therefor is not required."

[By courtesy of the County Planning Officer, Wiltshire County Council.]

Completion of Partially Developed Housing Estate

The following is an extract from the letter of the Minister of Local Government and Planning, dated July 24, 1951, giving his decision on proposals for the development of land forming part of the Pedmore Estate, Stourbridge, for housing purposes. The proposals had been referred to the Minister for decision in pursuance of a direction by him under s. 15 of the Act of 1947.

" Following a planning permission granted to the Pedmore

Land Co., Ltd., in 1935, a number of frontage plots were sold by the company, and the estate has already been partially developed by the erection of nine houses fronting Bromwich Lane and Worcester Lane. On the outbreak of war 74 acres, including a number of individual plots sold by the company, remained to be developed. As the earlier permission had lapsed on the coming into operation of the Town and Country Planning Act, 1947, it was necessary for fresh applications for planning permission to be made.

At the inquiry it was stated on behalf of the Stourbridge Borough Council that while they were fully aware of the high agricultural value of this land, they were of the opinion that the development of the whole of the estate would soon be inevitable to meet the demand for high-class housing, and, therefore, in the interests of existing plot holders who had been unable to erect their houses, the development of the whole estate would be allowed to proceed notwithstanding the effect upon agriculture. These views were supported by the Worcestershire County Council, who were of opinion, after considering all the objections, that, on balance, the development of the estate should be allowed.

The Minister has carefully considered the views expressed by you and on behalf of the Pedmore Land Co., Ltd., the owners of plots and the local authorities, and has consulted with the Minister of Agriculture and Fisheries. He has come to the conclusion that, in view of the urgent need to conserve good class agricultural land, and the importance of controlling residential development in this part of Worcestershire, it would not be right to grant permission for this development. He is assured that land of less agricultural value is available in the vicinity, and he is satisfied that it would be preferable for this land to be developed rather than the Pedmore Estate. He has taken full account of the position of those persons who have purchased plots in the expectation that they could build upon them, but he does not consider that their individual interests ought to outweigh the general considerations which have influenced him in arriving at his decision.

He has therefore decided to refuse permission for the development of the estate by the construction of an estate road as in your application for planning permission."

[By courtesy of T. Leslie Tibbetts, Esq., F.R.I.C.S., Chartered Surveyor and Valuer, Auctioneer and Estate Agent, Cradley Heath.]

Placing of Caravan for Weekend and Holiday Use

The following is an extract from the letter of the Minister of Local Government and Planning, dated February 9, 1951, conditionally allowing an appeal against the refusal of the Tring Urban District Council to permit the use of a plot at Tring Grange Estate as a site for one caravan.

"The Minister is of the opinion that there is no immediate prospect of the land returning to full agricultural use as part of the larger unit. He notes, too, that the plot is screened almost completely by high hedges and a dip in the land. He has therefore reached the conclusion that the proposed siting of a caravan on the land for a limited period for weekend and holiday use only, will neither harm amenity, nor prejudice unduly the planning authority's long term proposal for the estate, with which he is in general agreement.

The Minister has accordingly decided to allow the appeal to the extent that he grants permission to site one caravan on the land for residential use at weekends and holidays for a period ending September 30, 1952."

Local Authority's Policy to Restrict Caravans to Organised Sites

The following is an extract from the letter of the Minister of Local Government and Planning, dated March 31, 1951, dismissing an appeal against the refusal of the Chichester Rural District Council to permit the use of land at Elmer, near Bognor, Sussex, as a site for one caravan.

"The Minister appreciates your desire to utilise your plot of land to some advantage until you can build a semi-bungalow. He must, however, have full regard to the Council's policy of controlling caravans by the provision of organised caravan parking sites, and he accepts this policy as being the most suitable for the area.

The Minister must, accordingly, dismiss your appeal.

I am to draw your attention, however, to the Town and Country Planning General Development Order, 1950. Class IV of Part I of the First Schedule to the Order permits the placing of moveable structures on certain land for any purpose on not more than twenty-eight days in total in any calendar year, subject to compliance with the conditions specified in Part II of the First Schedule. This permission is not invalidated by the decision on your appeal."

Caravan Camping Site Within Residential Area of Village

The Minister of Local Government and Planning has dismissed an appeal against the refusal of Kent County Council to permit land behind the Old Rectory, Dymchurch, to be used as a caravan camping site. A local inquiry was held into this appeal.

The appeal site lies within the residential area of the village. Permission was refused because it is the policy of the Council to confine camping sites to the outskirts of the village.

The Minister considers that the Council's policy accords with the proper planning of the area.

[By courtesy of the Public Relations Officer, Kent County Council.]

Caravan Site as Sub-standard Housing Estate

The following is an extract from the letter of the Minister of Local Government and Planning dated September 3, 1951, dismissing an appeal against the refusal of Maidenhead Borough Council to permit land at Pinkneys Green to be used as a caravan site.

" The type of house intended cannot be built in present circumstances and it is desired to develop the land as a caravan site in the meantime. £2,500 to £3,000 would be spent in laying out the land and providing main drainage, lavatory blocks and a water supply. It was contended that the site was well screened; that there was a shortage of caravan sites and that the use would not lead to any traffic difficulties as it was probable that most of the caravans would be more or less permanent residences.

The Council refused permission on the grounds that the proposal is one to introduce sub-standard living accommodation in an area of permanent residences, and that the development would prove prejudicial to the locality. At the inquiry they stated that they had made and would continue to make provision for local residential caravans on municipal sites. They were prepared also to let individual plot owners live in caravans on their land until houses could be built, and this would apply to the appeal site if it were sold in building plots.

After carefully considering all the facts of the case and the representations made, the Minister sees no sufficient reason to differ from the Council's view and he has decided accordingly to dismiss the appeal."

[By courtesy of the Town Clerk, Maidenhead.]

Use of Private Petrol Pump for Supplying the Public

The following is an extract from the letter of the Minister of Local Government and Planning dated August 28, 1951, allowing an appeal against the refusal of the Wiltshire County Council to consent to the use of a private petrol pump at the rear of a bungalow at Westbury for supplying petrol to the general public.

" It was stated by the appellant at the inquiry that he has at present three coaches and four taxis which are serviced and repaired on the site. In addition, he is under contract to garage and service the local Council ambulance, to supply it with petrol and to find a driver for it at any time of the day and night. His premises are therefore always open and he would like to be able to supply petrol to the general public, from the existing pump which he now uses for his own vehicles and the ambulance.

The first reason given by the Council for their decision is that they consider there are already adequate facilities in Westbury for the re-fuelling of vehicles but the Minister would not feel justified in dismissing the appeal on that account.

The Council's other objections are that the proposed development would be detrimental to the residential amenities of the area, and would be a danger to users of the highway. Station Road is a class III road and is not heavily trafficked. Moreover, the petrol pump is 130 feet from the road and the yard in which it is situated has accommodation for some ten vehicles at a time. After carefully considering the facts of the case and the representations of the parties, and after consultation with the Minister of Transport, the Minister has reached the conclusion that the proposed new use is unlikely to have any serious effect on the traffic problem. Neither does it appear to the Minister that it would add appreciably to the effect on the surrounding properties of the present established use of the premises as a coach and taxi depot. In the circumstances, the Minister has decided to allow the appeal to the extent that he permits the use of the petrol pump, in its present position, for supplying petrol to members of the public."

[By courtesy of the County Planning Officer, Wiltshire County Council.]

Book Reviews

The Leasehold Property (Temporary Provisions) Act, 1951.

By S. Seuffert and G. Avgherinos. (Eyre & Spottiswoode, xi and 64 and (appendices and index) 28 pp. Paper. 10s. 6d.)

By H. Heathcote-Williams, K.C. (Thames Bank. xiv and 94 and (appendices and index) 38 pp. Card. 10s.)

By T. J. Sophian and G. E. Llewellyn Thomas. (Pitman. xii and 58 and (appendix and index) 24 pp. Cloth. 12s. 6d.)

Seuffert and Avgherinos is a modest production both in size and scope. Nevertheless, it manages to give the reader who is not too closely concerned with matters of interpretation a sufficient grasp of the purpose and effect of the Act. After a short introduction each section in turn is annotated. The notes are expressed in simple yet clear and laconic language. In particular, having regard to the small compass of the book, the notes to Part II (Shops) are most useful as, indeed, might be expected from a work in which Mr. Avgherinos has a hand. The book contains very few mistakes, to which, however, note 1 on p. 34 appears to be an exception. Further, note 5 on p. 13, which concerns the meaning of " residing " in s. 1 is misleading, and is not supported by the case cited.

The most readable of the three books is *Sophian and Thomas,* which is also limited in scope, perhaps more so than the first book above. Each section seriatim is explained in ordinary language by means of a general note interposed between the words of the Act and the particular notes to individual features. Surveyors, estate agents and lawyers will find this little book concise and accurate, and quite adequate for all ordinary purposes.

The specialist practitioner who needs an answer to some of the more difficult questions raised by the Act, or who wishes to ascertain its pitfalls, could not do better than refer to *Heathcote-Williams.* This book is ambitious and the editor has been able to provide much detail in the notes. He has obviously given very careful attention to every aspect of the Act, and there can be few difficulties, latent or otherwise, which he has been unable to record and solve. It cannot be said that this book is readable, although it is a useful reference work. The Act is considered subsection by subsection, and often one subsection is separated from the next by pages of notes. Were it not that the subsections are in bold type and that the Act is printed without annotations in the appendices, continuity would be almost impossible for the reader. Altogether, in the opinion of this reviewer, the method of presentation adopted in this book is not the best. Nevertheless, the book will be found most valuable since the notes are exhaustive, and despite one or two instances of prolixity, excellent. *Heathcote-Williams* compares favourably in price with the other two books reviewed above.

V. G. Wellings.

BOOKS RECEIVED:

Rent Restrictions. By E. Dangerfield, with a Foreword by R. E. Megarry. (Stevens & Sons, Ltd. 1951. 133 pp. 8s. 6d. net.) ("This is the Law" series.)

Local Authorities' Powers of Purchase—A Summary. By A. S. Wisdom, Solicitor. (Justice of the Peace, Ltd. 1951. 12 pp. 4s. net.)

A Comparative Study of the Utilisation of Space in Current Types of Dwellings in 14 European Countries, 1948/1949. (United Nations—Economic Commission for Europe. 1951. 63 pp.)

Practical Points

All questions for consideration should be addressed to " The Managing Editor, The Journal of Planning Law, 3 Chancery Lane, London, W.C.2 ". The questions of subscribers only are answerable in the Journal. All questions should be submitted in duplicate. The Publishers cannot accept any responsibility for the correctness of replies.

335. *Development charge—relation to development value.*

On July 1, 1948, a firm of building contractors owned several building sites including one in which C is interested, and in respect of which a claim for loss of development value was made and near-ripe treatment asked for. This has been approved in principle but not yet agreed in writing. The site contains about 6,200 square yards and cost £1,360 in 1939. It is a good building site but requires a certain amount of site works, and the firm paid more for it than was paid for adjoining sites because of its superior position.

The District Valuer has valued the site at £400 with existing use value at £130, making the development value £270.

The firm have offered one-half of the site to C at one-half the original cost, namely, £680, and C is anxious to proceed with the purchase. It is not intended that the conveyance to C should contain an assignment of the claim.

The District Valuer has been asked to give an estimate of the development charge in the event of one-half of the site being built upon by C, but he refuses to do so, and we are not clear upon what principle he will eventually base the development charge.

Will the charge be based in proportion to the £270 development value, or should the District Valuer take into account the purchase price of £680, and thereby arrive at a much higher development charge? [W. T. & W.]

ANSWER

The development charge under Part VII of the Act may well exceed the development value for purposes of Part VI. The latter was probably calculated on the basis of development being likely to be deferred for a number of years (a purchaser in January, 1947, might well have assumed that), whereas the development charge is related to imminent development. Also development value is related to a particular interest in the land whereas development charge is related to the hypothetical freehold in possession; possibly this makes little difference in the present case as also the fact that r. 3 of s. 2 of the 1919 Act applies to development value but not to development charge. Whether there has been any local improvement in values since January, 1947, due to greater demand, etc., is also a matter for consideration. The fact that the purchaser is prepared to pay £680 is evidence of the present value of the land although, on the principle that one swallow does not make a summer, not conclusive evidence. [W. A. L.]

336. *Enforcement notice—withdrawal by agreement.*

We act for a client upon whom an enforcement notice was served on June 30, 1951. We consider that the notice has been served on the wrong person and, further, that the use of which discontinuance is requested is an existing use which goes back for some thirty years. We have been in correspondence with the county council on the subject and we think that they probably agree with our contention that the notice was in fact wrongly served, and they certainly agree that the use is of sufficiently long standing to be beyond the planning authority's powers of interference by enforcement notice.

We have issued a summons which will come before the magistrates asking for the notice to be quashed. We realise that the difficulty mentioned in the article at [1951] J. P. L. 506 will confront us in that if the notice is invalid the magistrates may have no jurisdiction. However, the county council have agreed to withdraw the notice which has been served, and suggested that we could accordingly abandon the appeal to the magistrates. But have the county council any power to withdraw this notice once it has been served? Under the provisions of s. 23 of the Act it seems that once they have called a notice into being the quashing must be a matter for the magistrates. Further, the local authority who have registered the enforcement notice as a land charge may decline to remove the registration from the register merely because the county council says that it has been withdrawn, and may argue that the enforcement notice is still alive, having never been buried with the proper formalities of s. 23. [R. & P.]

ANSWER [1]

It appears that the best course is not to abandon the appeal but to forget that the notice has been served on the wrong person and to rely on the fact that no such permission is required as the use goes back for thirty years. The magistrates are then in a position to quash the notice as the matter comes within s. 23 (4) (*a*). The local planning authority will hardly argue that their own notice is invalid.

If the only objection to the notice had been that it had been served on the wrong person, the difficulties envisaged in [1951] J. P. L. at pp. 510–512 would arise, and it might, if strict formalities were observed, be necessary to obtain a declaration from the High Court that the notice is bad. As the local planning authority agree that the notice is bad, if the position is explained to them they may be prepared through their clerk to give an undertaking in writing that no actual enforcement proceedings would be taken and a prospective purchaser might be prepared to accept that. Your clients' own use of the premises is safeguarded by their own knowledge that no enforcement procedure will be attempted. [R. P. C.]

337. *Material change of use—hat factory to printing press.*

Clients of ours have purchased a dwelling-house, and in the garden there is a detached building which was used for a hat factory. They wish to install two printing machines in this building and carry on the business of a printing press in a small way.

We have inquired of the local authority if this is a change of user, and in the usual manner nobody will take the responsibility of giving a decision, and we have been handed various forms to fill in with the information that a meeting of the requisite committee will be held in six weeks' time.

In our opinion a hat factory falls within Class III of the Use Classes Order, 1950 (SI 1950, No. 1131), and we believe a printing press is under the same class. We shall be grateful for your opinion. [A. & C.]

ANSWER

A verbal ruling is not binding on the authority and the only way in which a decision can be binding is if it is made on a formal application for planning permission or under s. 17 for a determination as to whether planning permission is necessary.

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[1] Further observations on the position referred to in this point will be found in the article at p. 645, *ante*.

It is not always easy to decide whether the industry is a light industrial use or a general industrial use as this is dependent on the presence or absence of noise, smell, smoke, soot, ash, etc., and the suitability for establishment in a residential area, and it is often necessary to visit the site to discover the true position. A hat factory may include anything from sewing operations to dyeing processes, and a printing press (even in a small way) may be capable of noise. If both are general industrial uses or both light industrial uses no planning permission is required: similarly if there is a change from a general to a light industrial use (Class III, Sched. I, of the General Development Order). It is only if the hat factory is determined to be a light industrial use and a printing press a general industrial use that planning permission will be required. [R. P. C.]

338. *Near-ripe land—position of mortgagees.*

We act for mortgagees who, in 1946, advanced £1,040 on the security of near-ripe land, purchased at that time by the mortgagor for development, at the price of £1,300.

A claim for compensation under the regulations governing a builder's near ripe application was made by the mortgagor, the benefit of which was subsequently assigned by deed to the mortgagees.

The land then became subject to a compulsory purchase order and was later acquired by the county council, the price paid being £775.

The Central Land Board now maintain that owing to the assignment of the mortgagor's claim for compensation to the mortgagees, the claim is no longer eligible for builders' near ripe treatment and that if the assignment is allowed to stand, compensation on the ordinary basis only will be paid.

In these circumstances, we are considering the re-assignment of the benefit of the claim to the mortgagor, but in view of the fact that the Treasury scheme (which it is assumed will make provision for payment to mortgagees) has not yet been published, we are in the meantime wondering how to ensure that the payment for compensation will be made to the mortgagees. [W. B. & G.]

ANSWER

It certainly seems that the mortgagees would be best advised to execute the suggested re-assignment, and to rely on the personal covenant of the mortgagor and the promise of the C. L. B. (see Press Notice dated November 24, 1948; [1949] J. P. L. 40) to include in the Treasury scheme a provision protecting mortgagees, similar to s. 24 of the War Damage Act, 1943. [J. F. G.]

339. *Planning permission and development charge—addition of land to curtilage.*

The frontage of what was originally the parkland of a mansion (now converted into flats) has been divided into building plots. Of three adjacent plots, A, B and C, bungalows have been built on the two outside plots, A and C. Plot B is still vacant and overgrown, and two strands of wire divide it from a grass space which, extending along the backs of all three plots, is used for keeping children's ponies. The owners of A and C have decided to buy B between them in order to increase their respective gardens and preserve the privacy they now enjoy by virtue of B not having been built upon. It is proposed that B shall remain as a separate plot for the time being and be cultivated as a garden. In about twelve months' time the owners of A and C propose to take down their inside boundary fences and to re-erect one of them down the centre line of B, thus adding to the existing gardens of A and C their respective halves of B which will then have itself assumed the character of a garden. The fences between A, B and C are not more than 7 feet high.

I should be glad to have your views as to whether the proposal will require planning permission or attract a development charge. [G. S.]

ANSWER

In *Sampson's Executors* v. *Nottinghamshire County Council* (1949), 1 P. & C. R. 1 at p. 8, Lord Goddard, C.J., said, *obiter*, that if agricultural land were brought within the curtilage of a dwelling-house so that it became part of the dwelling-house an alteration would have been made in the use of the land. But it seems clear that transfer of part of a garden from the curtilage of one dwelling-house to that of another dwelling-house cannot amount to a material change of use, and I consider that if the parkland is within the curtilage of the mansion house then no planning permission will be required as the land will retain its use as being ancillary to dwelling-house purposes. If it is outside the curtilage there may be a change of use, and it might be advisable to apply for a determination under s. 17 of the Act.

The erection of fences is, within certain limits, permitted development under Class II of Sched. I to the General Development Order, 1950, and is exempt from development charge under para. 8 of the Development Charge Exemptions Regulations, 1950. [R. P. C.]

340. *Use classes—brewery.*

We shall be obliged to you for your opinion as to whether you agree that a brewery comes in class IV (general industrial building) of the Use Classes Order, 1950, and so may be used without planning permission and development charge for, *e.g.*, an engineering works.

In view of the mention of smell, if not fumes, under the definition of class III (light industrial building) we think there is very little doubt. [S. F. & M.]

ANSWER

Those questions are always matters of opinion but in this case I agree that there can be very little doubt that the case is in class IV. [W. A. L.]

THE JOURNAL of PLANNING LAW

Published by

SWEET & MAXWELL, LIMITED

2 & 3 CHANCERY LANE, W.C.2

On the First of Every Month

Subscription: £1 10s. 0d.

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"Planning Law" Notes

The General Election has resulted in a new Government. The title of the former Ministry of Local Government and Planning has been changed to that of the Ministry of Housing and Local Government but no change has been made in the subjects which fall within the scope of the Ministry. The Prime Minister (Mr. Churchill) said in the House of Commons on November 12 last that the word " Planning " had been omitted from the Minister's title for reasons of brevity and not of policy.

The new Minister of Housing and Local Government is Mr. Harold Macmillan who is in the Cabinet. The Parliamentary Secretary is Mr. E. Marples.

The following is an extract from " Britain Strong and Free ", the statement of Conservative and Unionist policy at the recent General Election: The sale of land for the building of houses and for development of all kinds has been hampered by the Socialist Town and Country Planning Act. This has brought the planning of land use into disrepute. Conservatives want to see that the land is used properly, and that its beauties and amenities are preserved. Procedure for obtaining planning permission can be simplified and appeals must be heard by a properly constituted tribunal.

The Development Charge has worked very unfairly and has also impeded good development. The present scheme for compensation gives inadequate sums to many who suffer genuine loss, but at the same time it hands out taxpayers' money to others who would lose nothing.

This must be drastically altered. We shall proceed on the principle that for certain classes of property there should be no development charge and no compensation. For others, there should be full compensation and a corresponding charge. There must be a right of appeal against assessments.

It is obvious from the foregoing that some fundamental changes are contemplated at least in the provisions of the Act which relate to development charges, and to payments for the depreciation of land values which resulted from the expropriation of development rights in 1948. Such changes will give rise to the most difficult technical problems and precise proposals will be awaited with the liveliest interest.

Many of the matters which may receive the attention of the Government are discussed in Mr. Desmond Heap's address to the National Conference of the National Housing and Town Planning Council, which is printed on p. 687, *post*.

Town and country planning began its departmental history in 1909 when it was put in the care of the Local Government Board by the Housing, Town Planning, etc., Act, 1909. In 1919 the functions of the Board were transferred to the Minister of Health, who retained them until they were transferred to the Minister of Works and Planning by the Minister of Works and Planning Act, 1942. Thence they passed to the newly created Minister of Town and Country Planning under the Minister of Town and Country Planning Act, 1943. Then, in 1951, the style and title of the Minister were changed to Minister of Local Government and Planning by a Statutory Instrument (SI 1951, No. 142). And lastly, the Minister has become the Minister of Housing and Local Government : see SI 1951, No. 1900, *post*, p. 711.

Mr. T. A. Blanco White contributes the following: The reference in my article (on p. 644) to "interim permission under the 1922 or 1925 Act" involves a clerical error: it should have read "interim permission under the 1922 Interim Development Order and so under the 1919 or 1925 Act". Perhaps you would offer my apologies to any readers who have wasted time in looking for a 1922 Act. This same piece of mythical legislation has left its mark on p. 642, where "1922" should read "1932".

Professor W. G. Holford, F.R.I.B.A., M.T.P.I., has accepted the invitation of the Minister of Local Government and Planning to become chairman of the Advisory Committee on Buildings of Special Architectural or Historic Interest, in succession to the late Sir Eric Maclagan. Professor Holford has been a member of this committee since it was first appointed in 1945.

The Orders designating the Snowdonia and the Dartmoor National Parks have been confirmed by the Minister of Local Government and Planning.

Two public inquiries were held into the Snowdonia Order, and after considering the reports of these proceedings the Minister modified the proposed area by excluding a small area in the south and by including four areas, measuring about 14 square miles, in the north and west. The total area of the Park will be about 845 square miles.

The Order for the Dartmoor Park was confirmed without modification. This is the smallest of the National Parks so far designated, its area being 365 square miles, all in the County of Devon.

Mr. R. P. Crompton contributes the following note: A certain plot of land was leased by A to B for a period of 999 years on a ground rent of £44 2s. 6d. B developed part of the land by building houses and transferred the remaining 2 acres to C, charging the land with payment of the whole of the £44 2s. 6d. The local authority entered on the land under an authorisation in writing in 1948 and commenced the erection of houses in September, 1948, after carrying out various street and sewer works. In April, 1949, notice to treat was served on both the freeholder and leaseholder.

The leaseholder's interest has been agreed at a nominal figure of £1 but there has been difficulty in agreeing the value of the freeholder's interest. The land itself at existing use value would be worth £220 or £110 an acre. The capitalised value of the land on sixteen years' purchase of the ground rent is approximately £700. But although the Act intends that land shall be bought and sold at existing use value, it is an interest in land that is being purchased and not the land itself. If the intention of the Act were fully implemented the leaseholder C would be paying money to the local authority for taking over his land but compensation for compulsory purchase does not admit of minus quantities. The difficulty for the local authority is increased by the fact that they cannot claim any exemption from development charge, and C has made a claim against the global sum the benefit of which he is not obliged to transfer. Even if the Central Land Board disallow this claim on the ground that there is no hardship this will not help the local authority. C had not got a dead ripe certificate and as he was not a registered builder had not qualified for a near ripe certificate. In the normal course of events C, who had the requisite byelaw consent within the ten years preceding January, 1947, would have applied again for planning consent in order to qualify for a dead ripe certificate, but when he learned of the intentions of the local authority he neglected to do so. [See also on this point the article "Leaseholds and Existing Use Value", [1950] J. P. L. 563.]

The Mineral Development Charge Set-Off Regulations, 1951, were made on September 27, 1951, and laid before Parliament on October 4. They require an affirmative resolution of each House of Parliament under s. 81 (5) of the Act of 1947 and s. 39 of the Mineral Workings Act, 1951.

There have been many amendments to the preliminary draft regulations published last April as an appendix to a White Paper (Cmd. 8217: *ante*, p. 348) and although no important changes of principle have been made, reference should of course always be to the regulations as made. We propose to publish a summary of the regulations when they have been approved by Parliament.

There has been an interesting decision of the High Court on the question whether clearance of a site and other preparations for building can be said to be "works for the erection . . . of a building" under s. 78 of the Act of 1947, *post*, p. 718.

The Lands Tribunal have held that in assessing compensation under s. 55 of the Act, where notice to treat was served between the passing of the Act and the appointed day, no regard can be paid to a s. 80 dead-ripe certificate, and the compensation can be only the existing use value of the land, notwithstanding that the certificate excludes the possibility of any payment from the £300 million fund in respect of loss of development value. See *post*, p. 723.

This issue of the *Journal* completes our fourth volume. The wide incidence of planning law and the great interest shown in it, perforce, not only by lawyers and local government officers, but also by all surveyors, auctioneers, landowners and others whose professions or interests are concerned with the development of land, show no signs of abatement.

Apart from the possibilities of amendment of the law, as to which speculation naturally is current with the advent of a new Government, it is clear that a great many problems will continue to arise in the future. We publish in this issue (*post*, p. 721), a summary of the first decision of the Lands Tribunal in an appeal against a determination of development charge for the purposes of Part VI of the Act—a reminder that not only does the whole of the s. 58 scheme remain to be drawn up but also all of the disputed valuations for the purposes of the scheme have yet to be determined.

Meanwhile, development plan inquiries are being held in many different parts of the country, see *post*, p. 710, and will no doubt do much to awaken a more general interest in town and country planning throughout the country.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Journal. They should be sent to the Managing Editor, *Journal of Planning Law,* 3 Chancery Lane, London, W.C.2. *Every attempt will be made to return drafts or unsuitable copy, but no guarantee can be given in this respect.*
Books for review should be sent to the Publishers at the above address.

The Town and Country Planning Act, 1947—A Further Commentary

By DESMOND HEAP, ESQ., LL.M., L.M.T.P.I.,
Comptroller and City Solicitor to the Corporation of London

An Address given to the National Conference of the National Housing and Town Planning Council at Bournemouth, Friday, November 23, 1951.

1. The number of commentaries which can be made on the working of the Town and Country Planning Act, 1947, seems to be infinite. In this one I am selecting for discussion certain points which I know have recently been (and probably still are) the subject of much argument among planners, developers and land owners. After dealing with these I shall conclude with some general observations on the application and use which is to be made of the extensive powers conferred upon planning authorities by the 1947 Act. I should add (the intricacies of the 1947 Act being what they are) that throughout the commentary I bear in mind that this National Conference is attended not exclusively (as are some) by technicians and experts, but, on the contrary, contains a wholesome and tempering leaven of laymen.

I. Delays in obtaining planning permission for development.

2. It is still being said that there is great delay in getting planning decisions from the appropriate planning authority. The period normally allowed by the Town and Country Planning Act, 1947, is two months, that is to say, exactly the same period as under the Planning Acts of 1932 and 1943, and if an authority has not dealt during this period with an application for planning permission, such permission is deemed to have been refused in exactly the same way as it was under the 1943 Act, and the right of appeal to the Minister of Housing and Local Government thereupon immediately arises just as it did before. It is true that extensions of time for giving decisions can be granted and it may be that planning authorities are more prone to request such extensions than before the 1947 Act. If this is in fact happening it can only be because the provisions of the Act relating to delegation as between

those authorities (namely, county councils and county district councils) between which delegation of the power to grant or withhold planning permission is permitted, are not being operated to their fullest extent.

3. The fact that the many county district councils have ceased under the 1947 Act to be local planning authorities in favour of the comparatively few county councils necessitates, for the smooth working of the Act, that the largest possible measure of delegation shall be granted by the county councils to their respective county district councils. Many schemes of delegation have been made and some are no doubt better than others. In some quarters there is hesitancy in granting a reasonably full measure of delegation but no doubt this will disappear when the first development plans made by the county councils come into operation and the county district councils then have before them as guiding factors their county councils' express word as to the lines on which the development of any particular area should be allowed to proceed. It will, however, be some time before even the first development plans come into operation. (Many have not yet been submitted to the Minister of Local Government and Planning for approval, and it does not seem to me to be an outrageous estimate if I say that we can expect a period of at least twelve months to elapse between the submission of a development plan to the Minister and the date when it comes into operation). In the meantime every possible step should be taken to avoid extensions of the basic, and long established, two months' period for the giving of decisions on planning applications even if this means, as well it may, that under the press of applications now being made (in view of the wide scope of the definition of " development " in the 1947 Act) that planning committees of local authorities have to meet much more frequently than hitherto. This may be an inconvenience to the members of such committees but if members of local authorities are to have the privilege of wielding the important and extensive powers which the 1947 Act puts into their hands they must be prepared to bear the inconvenience of frequent meetings in order to secure the efficient exercise of such powers.

II. The control of advertisements and the challenge of existing advertisements.

4. As is well known, certain outdoor advertisements which were formerly immune from control by local planning

authorities have recently lost their immunity and as from August 1, 1951, all outdoor advertisements come under the full control of the 1947 Act, and the Town and Country Planning (Control of Advertisements) Regulations, 1948, as amended. It is fair to remember that the object of these Regulations is to control the exhibition of outdoor advertisements but not to prohibit them absolutely. Accordingly, it would appear that local planning authorities discharging their powers of control need to be possessed of both taste and discretion, for if there are many places where outdoor advertisements ought not to appear at all it may be admitted that there are also places where they can well appear and serve a useful purpose in so doing.

As I have stated all outdoor advertisements, no matter when they were first displayed, are now liable to challenge by local planning authorities, and in exercising their powers such authorities will, of course, remember that their deliberations must be directed solely to (a) the interests of amenity, and (b) the interests of public safety, and not to anything else such as, for example, censorship of the contents of the advertisements.

5. Many outdoor advertisements comprise clocks which purport to inform the public about the time of day. The question is often asked as to whether local planning authorities in consenting to the display of an advertisement clock can attach conditions touching the matter of accurate timekeeping by that clock. In my opinion this can only be done if it can be shown that inaccurate timekeeping is a matter affecting the interests of amenity, the matter of public safety (the only other matter which, in the circumstances, can lawfully be considered by the local planning authority) not being relevant. In my view it cannot so be shown, but as I have recently heard much discussion on the point I venture to set out at length in the next two paragraphs the considerations which lead me to this conclusion.

6. The word " amenity " is not defined in the Advertisement Regulations, 1948, nor is it in the Town and Country Planning Act, 1947, where it is also used. The New English Dictionary (*i.e.*, the Oxford English Dictionary) defines " amenity " as " the quality of being pleasant or agreeable " as, for example, of places, their situation, aspect, climate, and of persons, their habits and actions. The only judicial dicta of which I am aware on the meaning of " amenity " is that given by Scrutton, L.J., in *Re Ellis and the Ruislip-Northwood Urban District Council*, [1920] 1 K. B. at p. 370, where the

learned Judge, referring to the use of "amenity" in the Housing, Town Planning, etc., Act, 1909, said "the word 'amenity' is obviously used very loosely; it is, I think, novel in an Act of Parliament, and appears to mean 'pleasant circumstances or features, advantages'. Wide streets and plenty of air and room between houses seem clearly to be amenities, and a provision securing them by setting back houses to a given line seems to me to be a provision with a view to securing amenity".

7. The matters mentioned in the previous paragraph impel me to think that when considering an advertisement clock from the angle of amenity all that can be considered is the aspect of the clock in its relationship to neighbouring property, and it seems to me that a clock which, with its hands *correctly* set at 3.15 is acceptable from an amenity point of view must be equally so acceptable when its hands are *incorrectly* set at 3.15. In each case the "look" of the clock is the same and its impact on neighbouring property is the same; all that is different is the information which it purports to give—the information being correct in one case and incorrect in the other. Matters of information and matters of amenity are, in my view, entirely different, and although the "look" or aspect of a clock may mislead the person looking at it, the clock itself is the same clock whether it shows the right time or the wrong time. To suggest that the church clock, the hands of which (like the one in the poem) have stopped "at ten to three" offends amenity at eleven minutes to three G.M.T. but does not do so one minute later (when G.M.T. itself is "at ten to three") is, I think, to adopt an untenable argument.

III. Inability of a local planning authority to postpone the determination of a planning application.

8. It will be remembered that the provision in the Town and Country Planning (Interim Development) Act, 1943, which gave a planning authority power to postpone giving its decision on an application for planning permission, was repealed by, and not re-enacted in, the 1947 Act.

9. Many planning authorities regret this because it follows that they often have to determine applications for planning permission (quite frequently by refusing them on planning grounds) long before there is any real chance of the proposed development being carried out.

10. The thought cannot be resisted that some planning

applications are made prematurely and in the hope that they will be refused. They are made in order to found a basis for the service of a purchase notice under s. 19 of the Act requiring the local authority to purchase the land covered by the application. The result in some cases is that the authority is forced into buying the land long before there is any chance of using it for any purpose, and there seems to be a tendency to unload quite a lot of this temporarily unusable land on to local authorities by the device of putting in an application for planning permission, the determination of which the local authority cannot now postpone. The local authority must either grant the permission or refuse it and a refusal often leads to a purchase notice.

11. Indeed, the advice given to the Minister of Town and Country Planning (as he then was) that by s. 12 (2) (*a*) of the Act the rehabilitation of a war-damaged building which was not totally razed to the ground but remained, for example, a burnt-out ruin of twisted girder work, was *not* development and, accordingly, did not need planning permission, came as a shock to some developers. They had applied for planning permission with a view of obtaining a refusal and following this with a purchase notice. They were shocked to learn that their proposals did not constitute development, that planning permission did not arise and that, accordingly, the service of a purchase notice simply could not occur. This state of affairs is now changed by the Town and Country Planning (Amendment) Act, 1951, whereby the reinstatement of a partially war-damaged building *does* constitute development and thereby requires planning permission before it can be undertaken.

12. It has to be remembered that purchase notices can be very expensive things for local authorities, especially when the provisions of s. 53 of the Act relating to the compensation which is to be paid on the compulsory acquisition of land attracting a converted value payment under the War Damage Act, 1943, are borne in mind. It is said, rightly, that on a refusal of planning permission for the development of land no compensation is (in general) now payable. This is so; but the local authority may be driven into buying the land by virtue of s. 19 of the 1947 Act, and if the land happens to be a cost-of-works property then the War Damage Commission, by virtue of the effect of s. 53 of the 1947 Act, appears to be saving money at the expense of the acquiring local authority.

IV. Development charges.

13. Development charges have been attacked with great force by all the professional bodies who in 1950 formulated criticisms of the 1947 Act, and also by many other persons and bodies who are unanimous that the 100 per cent. development charge which the Central Land Board has no alternative but to impose in every case where a charge is payable at all is destructive of all incentive either to develop land or to make it available for development. Indeed, when any considerable review of the 1947 Act is undertaken with a view to its amendment the 100 per cent. development charge is probably the matter which calls for first and immediate consideration. Compulsory purchase on a large scale by either the Central Land Board or by local authorities or by both can provide no satisfactory cure for the sterilising results which derive from the fact that the private individual has, to a great extent, now lost the desire to sell his land or to develop it. Some other remedy must be sought without at the same time restoring to local authorities the compensation bogey which is stated to be the ruination of good planning.

14. In these circumstances there is much to be said for the imposition of a development charge at say 80 per cent. (as was suggested in para. 16 (*e*) of the White Paper on " The Control of Land Use ", Cmd. 6537), or 75 per cent. (as was mentioned in a somewhat different context in para. 311 of the Uthwatt Final Report, Cmd. 6386) of the increase in value of land due to its development. This would restore, to some extent at least, the lost incentives and is something which it is submitted might well be considered in the light of recent experience and information.

15. Moreover, it is really elementary that there should be a right of appeal against the amount assessed by the Central Land Board by way of a development charge, and such appeal might advisedly lie to the Lands Tribunal established under the Lands Tribunal Act, 1949.

V. Claims on the £300 million fund.

16. " The Government take the view ", says para. 26 of the Explanatory Memorandum (Cmd. 7006) on the Bill which became the 1947 Act, " that owners who lose development value as a result of the passing of the Bill are not on that account entitled to compensation ". Whatever may be the position at common law it is really begging the question to fall back on abstract legal theories in order to circumvent a

recognised and well-established practice under which a man who bought land before the 1947 Act came into force paid the full market value of the land at the date of its acquisition, *i.e.*, he paid not only the existing use value of the land but also its development value. By reason of the Act he has lost such development value and it is submitted that claims on the £300 million fund (provided by the Act on an *ex gratia* basis and to cover what the Explanatory Memorandum aforesaid calls, in para. 26, " hardship " cases) should be capable of being made as of right, and that considerations of hardship should not enter into the matter at all.

17. Once the amount of the lost development value in land has been duly determined under the highly formal and deliberate procedure of Part VI of the Act and the Claims for Depreciation of Land Values Regulations, 1948, any claim in respect of such lost value should be met in full and the £300 million fund should, if necessary, be increased accordingly.

18. Planning will never become acceptable (except to those who have little to offer and nothing to lose) so long as the 1947 Act makes it possible to tell a man that whilst it is freely admitted that he lost over-night on June 30-July 1, 1948, £100 worth of development value in his land, he has at common law no claim whatsoever for compensation but that, purely with a view to saving him " hardship " (whatever that may mean), he will be offered, on an *ex gratia* basis and without admission of liability, say, £50, it being impossible to offer him more than £50 because the £300 million is not sufficient to meet in full all the duly proved and accepted claims which have been made for lost development value.

19. Small claims on the £300 million fund should not be excluded in the arbitrary fashion provided by s. 63 of the Act whereby no payment will be made in respect of lost development value unless—

(a) the development value, when averaged over the whole of the land included in the claim exceeds £20 per acre; and

(b) the development value of the land also exceeds one-tenth of its existing use value.

VI. As to the designation of land as liable to compulsory purchase.

20. Under the 1947 Act, s. 5 (2), land may be designated in a development plan as subject to compulsory acquisition by

a Minister or a local authority or a statutory undertaker provided the acquisition is likely to take place within ten years (or seven years in the case of agricultural land). Even after the designation has taken place it is necessary for a compulsory purchase order to be made as and when the time for the actual acquisition of the land arrives.

21. The whole theory of the declaratory-order procedure under the 1944 Act and the designation-in-a-development-plan procedure under the 1947 Act is that the single public inquiry into the declaratory order or the development plan will tend to shorten the arguments as and when the individual compulsory purchase orders for the piece-meal acquisitions come to be made. Under s. 45 of the 1947 Act when a compulsory purchase order for land is before the Minister for confirmation he may disregard any objection to the order which, in his opinion, " amounts in substance to an objection to the provisions of the development plan defining the proposed use of that . . . land ". It will be noted that the Minister *may* disregard any such objection but he is not obliged to do so. From the writer's personal experience it can be stated that when the compulsory purchase order stage is reached following the making of a declaratory order under s. 1 of the 1944 Act (the position will in due course be precisely the same following the making of a development plan under the 1947 Act) the same arguments as were used on the earlier occasion of the public inquiry held into the declaratory order are used again at the public inquiry into the compulsory purchase order, and there is, in fact, a repetition of argument on both sides.

22. Whilst it is doubtful whether the principle of designation of land as liable to compulsory purchase provides any saving either of time or argument so far as a local authority is concerned, it may, on the other hand, well be urged that the undoubted uncertainty as to whether designated land will ultimately be compulsorily acquired might hang over a plot of land for as long as ten years, and it would appear to be contrary to public policy that land which a local authority may or may not ultimately acquire should nevertheless have the possibility of compulsory acquisition associated with it for so long a period of time during the whole of which no other person will be interested in acquiring the land for development.

23. It appears likely that in the light of experience the development plans now being submitted for the Minister's approval will tend to contain less *designation* of land as subject to compulsory purchase under s. 5 (2) (*b*) or (*c*) of

the 1947 Act, and more *allocation* of land under s. 5 (2) (*a*) for use for specified purposes which may ultimately require its compulsory acquisition.[1] When the time for such acquisition arrives it ought then to be possible for a local authority to acquire such land (after the holding of a single public inquiry) by means of a compulsory purchase order made in the usual manner under the Acquisition of Land (Authorisation Procedure) Act, 1946, without it being necessary for such allocated land to be *first* designated under the 1947 Act (after a public inquiry) as liable to compulsory purchase and *then* actually acquired by compulsory purchase order made (after a second public inquiry) under the 1946 Act.

VII. Summary.

24. Summarising the points I have selected to make (and they *are* only a selection of the many which, under this complicated Act, provide food for thought) I would put them thus:—

(1) With a view to avoiding delays, the greatest possible measure of delegation, as between County Council and County District Councils should be secured in connection with the day to day granting or refusing of applications for planning permission.

(2) When using the very wide powers of control over the display of outdoor advertisements (all of which on and as from August 1, 1951, came under full planning control) local planning authorities must exercise taste and discretion remembering that if there are many places where advertisements should not appear at all there are some where they can appear and that, when fittingly exhibited, they can serve a useful purpose in informing the public.

(3) Consideration needs to be given to restoring a local authority's power to postpone its decision on a planning application thereby enabling it to spread, chronologically, the load of the growing number of purchase notices now being served.

(4) The whole system relating to the imposition of development charges requires reconsideration with a view to:—

  (a) the imposition of development charges which are something less than 100 per cent. of the increase in value of land due to the grant of planning permission for development so as thereby to restore to landowners the incentive either to sell their land or to take upon themselves the risks inseparably associated with developing it themselves; and

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[1] See hereon, *ante*, p. 629.

(b) the granting of a right of appeal to the Lands Tribunal against the assessment of a development charge by the Central Land Board.

(5) The provisions of the Act relating to payments out of the £300 million fund for loss of development value should be revised so as to provide that:—

(a) valid and accepted claims are paid as of right;
(b) valid and accepted claims are paid in full; and
(c) small claims are not arbitrarily excluded by the provisions of s. 63 of the Act.

(6) The matter of the designation of land as being liable to compulsory purchase at some future date (which may be as far ahead as ten years) requires reconsideration. The doubts and uncertainties leading to the temporary sterilisation of land which designation produces must be borne in mind when considering whatever benefits designation brings to a local authority.

VIII. Conclusory.

25. It is said that sometimes it is difficult to see the wood for the trees. The Town and Country Planning Act, 1947, is itself 206 pages in length and has now produced a brood of Rules, Regulations and Orders running to over 250 closely printed pages. Amongst all this verbiage it is not difficult to lose sight of main trends and principles, but the short conclusion to which a consideration of the first three years operation of the 1947 Act and its Rules, Regulations and Orders leads, may be stated with extreme brevity as being that the planning provisions of the Act are, in the main, fit and apt for their purpose; that it is the manner in which the Act seeks to solve planning's compensation-betterment problem (by the expropriation of development values and the imposition of development charges) which is, above all else, causing present criticisms of the concept of town and country planning; and that, accordingly, there should be some relaxation of the rigours of the full 100 per cent. development charge, and that if this cannot be done without again reviving the compensation-betterment problem, then the question must be faced as

to whether this problem really is capable of being solved in a manner which, if entirely satisfactory from the planning angle, is not entirely unsatisfactory from the development angle. The dire decision will then have to be taken as to whether either of these two angles is to be given complete satisfaction—and, if so, which. Probably the most statesman-like course will be to give neither of them complete satisfaction but to strike a balance between the two, that is to say, between the idealistic requirements of land planning and the realistic requirements of land development.

26. There is today so much talk of planning and of the need to control development that it is necessary to re-emphasise that planning is only a means to an end—it is no disrespect to the planners to say that—and that any tendency to elevate it into an end in itself should be resisted. The true end is the producing of development in the right places and at the right time, and in so far as planning discourages or hinders such development (whether it be public development or private development—and both are required) it is clearly something which is not in the public interest. It is arguable that under the 1947 Act the position has now been reached when not only is much bad development prohibited but some good development is in danger of being frustrated. It is submitted that this state of affairs would be all the more apparent if it were not for the fact that at the present time other factors (such as lack of raw materials) are militating against the carrying out of many schemes of building development and reconstruction.

27. My last words are to the planners, of whom I am not one (for I am a lawyer) but amongst whom I have many friends. Let them above all in formulating their schemes preserve a strong sense of proportion. A year ago the Schuster Committee reported on what are the "Qualifications of a Planner" (Cmd. 8059). Their report is a long one but I think I am right when I say that the one thing they want to see most of all in a planner is a sound sense of proportion in the widest sense of the term.

28. It is evident that the economic side of planning is now beginning to assert itself. We must be on our guard against repeating the more glaring mistakes of the past but, on the other hand, the cost of an over-rigorous use of the enormous planning powers now available is to be reckoned with. I am aware that these things may well pay for themselves in the fullness of time or, as I would put it, in the *far-future*. But,

in the meantime we have to live and get through the *near-future*, and we must do this without reducing ourselves to such a state that when the far-future comes (and we know its tendency to keep its distance and never arrive !) we are in a position to enjoy whatever fruits it brings. I think the Schuster Committee had this in mind when it spoke (in para. 65) of the " limits of the plannable " and said:

> " Finally and most important of all we come to the limitation of cost. The liability of local planning authorities to pay compensation may have been very much reduced; but the cost of development and the insufficiency of this country's physical resources to meet all demands are considerations of over-riding importance. Now that the plan is no longer a series of broad restrictions, and has become a programme for development, every local planning authority must consider whether its proposals are feasible; within what period they can be carried out; whether, if carried out as planned, they will prove economically justifiable and how the burden of the cost is to be borne. Cost in fact must dominate positive planning, since there is no end to the improvements in environment which are ideally desirable. It is cost that sets the limit, and when cost is ignored—as, indeed, appears to have been the case in some of the contemporary planning proposals—then planning is just so much waste paper.
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> This consideration is of particular importance in relation to the questions which have been put to us, and we may anticipate one of our conclusions by saying that the necessity for framing programmes in a realistic way means that an essential qualification which must be represented in the staff of any planning office is ability to appreciate the relation of planning to cost based on skill in the technique of estimating it."

29. These chastening words must, the times being what they are, now be taken closely to heart by all planners and all planning authorities. Half a plan is better than no development.

Notes on The Drafting of Planning Permissions

By W. A. LEACH, F.R.I.C.S.

The following observations are notes on points of interest raised by the Memorandum of the Minister of Local Government and Planning on the Drafting of Planning Permissions.[1]

Outline applications.

Circular 87 [2] brought out two points concerning the " outline application " under art. 5 (2) of the General Development Order, 1950.[3] Firstly, the outline permission should only be granted on adequate information to assess the development, and be subject only to subsequent approval of details; and secondly, the right under the Order, which is for an applicant to require a decision on an outline application for buildings, does not debar an authority from granting a permission for any other form of development subject to a condition as to subsequent approval in respect of specified matters, a practice the Minister commends.

The Memorandum now adds the point that all matters reserved for subsequent approval should be specifically mentioned in the permission. For example, a permission to erect a building would have to be considered as including a perhaps unqualified permission for the formation of access unless approval of the details of the position, etc., of the access has been reserved for future consideration and approval. One might add " for consideration and approval *before its construction* ". (See " Drafting of Conditions ", *post.*)

Personal permissions.

It may sometimes be in the interests of good planning to confine the benefit of a permission to a particular developer and the Minister is satisfied that this is lawful. He emphasises, however, that planning is concerned with the use of land rather than with the persons who use it, and that permissions restricted in this way (conveniently called " personal permissions ") are only justified in very special circumstances. To this end he suggests a double eliminating test: (i) the issue of such a permission should not be contemplated unless it is quite clear that the reason for imposing the restriction is a planning reason, and (ii) that there is no other means by which the desired result can be achieved. The Minister considers that where it is desired to avoid the perpetuation of a use allowed on hardship grounds, the better course may be to grant permission for a limited period only; but that a personal permission might be justified where the exceptional quality of a building makes it essential to ensure that its occupation for the permitted use remains in responsible hands. In other words, a personal permission must be personal for planning reasons and not personal reasons. I am willing to let the matter rest there (cf. [1950] J. P. L. 475).

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[1] Printed in full at [1951] J. P. L. 600.
[2] Printed in full at [1950] J. P. L. 432 ff.
[3] SI 1950, No. 728; [1950] J. P. L. 432 ff.

The Memorandum observes that the terms of a personal permission require particular care. It is, in effect, regarded as a permission for an " indeterminate period ", not attracting s. 18 (5) of the Act (which authorises the resumption of the previous use when a " limited period permission " expires). Provision should, therefore, be made for this in the permission itself.

The Minister is, perhaps, here confusing his departmental phraseology with that of the statute. The question is not whether the permission is for an " indeterminate period " but whether it is for a " limited period ", or more accurately, whether it requires the use to be discontinued at the end of a specified period. A permission that the use shall be discontinued when " A " ceases to be the responsible occupier of the premises concerned would surely prescribe a limited period? Is there some confusion here with a term certain and a life interest? There is nothing to say that the limited period must be certain but only that its duration must have a specified limitation. Human life may be uncertain but it is limited, and this (or the earlier cesser of occupation) necessarily curtails the duration of such a permission to x years only. History will reveal the value of x. Confusion might be avoided by calling a permission without limitation of time either a " perpetual permission " or an " unlimited period permission ". The former gives the sharper verbal contrast. An unlimited period permission is nevertheless not a permission which is not settled, fixed, definite, or precise—which are given in the dictionary as meanings of indeterminate. An " indeterminate sentence " is ended by the term being fixed, not by the sentence being revoked.

Conditions to be kept to minimum.

The automatic attachment of conditions to every permission is deprecated in the Memorandum since they will often be superfluous or inappropriate: this applies especially to standard conditions printed on the form of permission. The Minister says that it is not meant that local planning authorities should not standardise the wording of different types of conditions for use where appropriate. The Minister should by now be able to suggest a number of useful precedents (as he has done for mineral working), for so far as standardisation is possible there is no reason for variations from area to area.

Drafting the conditions.

The golden rule is that conditions must be capable of enforcement, *i.e.*, they should be clear and precise in expression, and so couched that effective action can be taken if they are not observed. Examples given of vague expressions to be avoided are " maintain the land in a tidy state ", or " so as not to cause annoyance to nearby residents " (but no alternatives are suggested and the Minister might look at his standard conditions under the Advertisements Regulations !). Conditions should not be made subject to qualifications such as " if called upon to do so " or " if the growth of traffic makes it desirable ", which leave the question of whether the condition is to apply to be settled at a later date, but here again no alternatives are suggested where future requirements do not admit of precise definition. True, something more positive is desirable, *e.g.*, " shall, if in the opinion of the authority it becomes desirable " or simply " shall if so required by the authority ", which is in line with common form in a licence from landlord to tenant.

The Minister next suggests that the extent of what can be required by an enforcement notice is defined by s. 23 (2), and the worth of a condition may be tested by examining it in the light of this subsection. Thus, if a developer has secured permission to erect a building subject to a condition that " the plans shall be submitted for the approval of the local planning authority ", and pushes ahead at once with his building, it may be that an enforcement notice could do no more than require the submission of the plans; the real requirement that the plans shall be approved *before any development is undertaken* has not been made clear. I am not sure that this is a good example since the implications of the conditions are so clear; but, of course, proper drafting is desirable, and this, perhaps, is a matter to which the legal officers of local planning authorities might give more attention. A prudent surveyor leaves to the landlord's solicitor the drafting of a licence to a tenant to carry out alterations and simply recommends suitable conditions. The planning officer is no more trained in the niceties of drafting than the surveyor, and although planning permissions should endeavour to be practical documents (like leases and licences), they may (also like leases and licences) become the subjects of litigation.

Conditions to be " planning " conditions.

The purpose of the Town and Country Planning Act is to regulate the development of land, and the powers it confers are *only* available for those purposes. Planning powers must not be used (to quote from the Memorandum) " as a sort of universal longstop when other powers are not available ". It will, however, often be found that matters which are of proper concern to planning are already regulated by another statute or common law, when it will generally be undesirable to seek to cover the same ground by attaching conditions to a planning permission, particularly if this would deprive the developer of compensation to which he would otherwise have been entitled. The existence of the condition will not waive the other responsibilities, so that if the requirements are the same the condition is unnecessary, whereas if they conflict confusion will result. The Memorandum points out, however, that there may occasionally be circumstances which make it desirable to supplement a specific control, *e.g.*, where the relevant legislation is out of date or preventive action is preferable to reliance on a statutory remedy. One may add here, also, cases in which the specific control is not sufficiently wide (see the Ministry booklet " The Control of Mineral Working ", para. 160). The Memorandum observes that the enforcement machinery of the particular legislation will have been designed for the particular purpose and will generally be more suitable than the enforcement procedure of the 1947 Act, which was framed to deal primarily with contravening development. It might be added that the penalty provisions may also be different, which is again a reason for relying on the more particular statute.

Improper conditions.

The Memorandum states that as local planning authorities are not authorised to delegate their powers and duties except in pursuance of s. 34, conditions which leave the extent of the obligation imposed by them to be decided by a third party should be avoided. It may be interpolated that most of such matters should be cleared up in the requisite consultations before permission is granted. Para. 113 of "The Control of Mineral Working" suggests that points of detail may sometimes be left to be agreed in consultation with another body, but if a matter is left subject to the approval of the local planning authority they could consult as they wished before approving, and there is no advantage in introducing third parties into the terms of permission.

Mention might here be made of the Bulletin of Selected Appeal Decisions I/18, in which the Minister held it to be improper to require a formal agreement to comply with the conditions of a permission. Attention has been drawn to this on one or two occasions in connection with the erection of hanging signs. Some authorities beat the Minister by requiring the agreement to be entered into under the Public Health or local Acts. All the necessary conditions as to sign can, however, be set out in the planning permission and the condition requiring the sign to be kept in safe condition presumably gives the authority as effective an indemnity against third party claims (if such indemnity is in fact necessary) as the more direct indemnity under the agreement. The net result is duality of control, which the Minister condemns, and the power to revoke without paying reasonable compensation by terminating the agreement, which also the Minister condemns. And there is a fee of a guinea or so for the agreement.

Limited period permissions.

Para. (*b*) of s. 14 (2) enables a local planning authority to grant permission subject to a condition requiring the removal of any building or works or the discontinuance of a use, at the end of a specified period (a limited period permission). To be within the wording of the paragraph the Minister appears to be of the opinion that the condition must define the period of the permission with precision, and expressions such as "six months or such longer period as the council may allow" or "the use shall be discontinued on three months' notice from the council" should not be used. The Minister does not, however, express a firm opinion on the validity of such conditions.

A convenient form of permission would be that " this permission shall endure for a period of three months and thereafter shall be deemed to be renewed from time to time for further periods of three months unless and until either party shall have given three months' notice that the permission is not to be deemed to be renewed ". This would make the duration of a permission similar to that of a periodic tenancy which is not in law " indeterminate ". Does the Minister consider this to create a valid limited period permission? (See also " Personal permissions ", *supra*.)

Reference may be made to a case reported in *The Estates Gazette* (1949), Vol. 154, p. 469, in which the Minister observed that a limited period was inappropriate to a permission for making good war damage. Presumably this would apply to making good damage by civil fire, etc., so far as such making good might be development.

Restrictions at the applicant's request.

Local planning authorities are sometimes asked by applicants to restrict a permission for the purpose of reducing the liability to development charge, either by limiting the period of the permission to the period of the applicant's interest in the land or by restricting the scope of the permitted use (*e.g.*, by excluding part of a Use Class).

The Memorandum advises that it is the duty of a local planning authority in dealing with applications to be guided by planning considerations. If, in their view as planning authority, the restriction suggested is *undesirable* it should be rejected. Nevertheless, it may often be found that a restriction suggested to lessen the amount of development charge payable is justifiable on planning grounds, *e.g.*, restrictions on the use of village halls and social centres (see PRACTICE NOTES, paras. 91 and 92). No hard-and-fast rule is possible and cases must be considered on their merits. It will be noted that the Minister is only strongly against conditions requested by an applicant where they are *undesirable* on planning grounds. In practice, if planning is to work smoothly, authorities must consider the difficulties arising from land tenure. A landlord may be quite willing to permit a tenant to carry on a particular use so long as his reversion is not impaired: or he may be willing to allow alterations and additions provided reinstatement will be allowed, the best method of ensuring that being a " limited period permission " requiring reinstatement. Again, on a change of use the lessee may (exercising his right under s. 72 (2) (*b*)) pay the development charge for a limited period (or the use may be less valuable), and on reversion the landlord may be faced with a permitted use in perpetuity to exercise which he must pay a development charge, or find permission to return to the former use refused. In considering whether a condition is "undesirable" the authority should bear in mind that in the absence of the condition no development may take place.

Time limits for taking benefit of permissions.

The Memorandum states that the local planning authority should always be prepared to show cause both for the stipulation of the condition that works should be commenced by a specified date and for the particular period chosen. It may be added that it would also be reasonable to explain this clearly to the applicant when granting the permission, and not to take refuge in stock excuses. The Memorandum then advises that a condition requiring that the development shall be *completed* within a fixed period should never be used, for the owner of a half-completed building might find himself, through no fault of his own, not only deprived of the right to complete it, but also unable to claim compensation under s. 22. An exception to this will be found in "The Control of Mineral Working", para. 161, and see [1950] J. P. L. 703. There may be other cases where the immediate development is in the nature of a stop-gap before other "programmed" development, and this principle could be applied. The position would, however, usually be met by a simple limited period permission and the quarrying provision must be regarded as exceptional.

Development in Barsetshire

Limited period planning permission for change of use from house to offices; amortisation of expenditure on conversion

The following conversation may be assumed to have taken place between S., a surveyor, and D.V., the district valuer, during an informal discussion on development charge:—

S. I can't understand how you get a development charge of £800 for the temporary planning permission to use the Grange at Hogglestock as offices. The facts are practically identical with the case discussed in Mr. Leach's article on development charge in the *Journal of Planning Law*,[1] and accordingly there should be a " nil " charge.

D.V. We have our own methods, you know, in the Valuation Office. Perhaps I have worked the valuation out in a different way.

S. You must have done. What figures have you used?

D.V. I have used a rental value after conversion to offices of £800 per annum and as a house £300 per annum. The cost of conversion I've taken at £2,000 and the cost of reconversion £200. The planning permission, as you know, is for fifteen years.

S. You seem to have gone wrong somewhere. According to my calculations the refusal value is substantially in excess of the consent value.

D.V. Let's see if we are in agreement on the refusal value. I've taken the residential rental value of £300 per annum at 15.4 years' purchase—6½ per cent. = £4,620.

S. Agreed.

D.V. Then I've taken the additional office rent of £500 per annum at 5 per cent. and 1½ per cent., allowing for income tax at 9s. in the £ on the sinking fund instalments.

S. That's not quite the same basis as mine, but what does it give you?

D.V. The relevant years' purchase is 6.3, so that additional Office value is £3,150.

S. I won't argue about that—my figure is very close to it.

D.V. My valuation in full is thus:—

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[1] [1951] J. P. L. 532.

		£	£
Residential Value in perpetuity ..		4,620	
Additional value of office use for 15 years		3,150	
			£7,770
Less—Cost of works		£2,000	
Reconversion at end of 15 years	£200		
Deferred at 1½ per cent.	.8		
		160	
Loss of rent during works		200	
			2,360
Consent Value			£5,410
Refusal value			4,620
Development Charge			£790
say			£800

S. I can see where you have gone wrong. You haven't provided for the recoupment of the £2,000 cost of works at the end of the 15 years, nor have you allowed for profit and risk. These two elements would reduce the Consent Value below the Refusal Value and show a " Nil " charge.

D.V. Let me deal with the second point first. As your clients have secured the planning permission to occupy the house themselves as offices there is no element of risk; as they own the adjoining works I regard them as special purchasers who would pay the full value without making any deduction for profit.

S. Without prejudice to that point to which I'll return presently, how about the expenditure?

D.V. I have allowed for the expenditure by deducting it, in effect, from the £3,150.

S. But you would have deducted it even for a permanent improvement; in this case the expenditure is rendered valueless after 15 years and must be recouped.

D.V. Let us take this gently. You agree my additional office value at £3,150?

S. More or less, yes.

D.V. Consider how that is made up; it presupposes a return of 5 per cent on the capital invested, and that after providing for that return you will be able to set aside sinking fund instalments (after paying tax at 9s. in the £) which will accumulate at 1½ per cent. net (about 3 per cent. gross) in 15 years to give you back the original £3,150 paid for the investment.

S. Yes, that's the theory of it.

D.V. Well, isn't it clear that anything which is deducted from the £3,150, causing you to pay less development charge or less for the interest, is got back at the end of the 15 years by virtue of the sinking fund which eventually accumulates to the original value of £3,150.

S. It sounds very convincing as you say it, but I'm still a bit hazy.

D.V. Let me work the calculation back step by step.

(*a*)	The income arising each year is £500 p.a.			
(*b*)	The amount to be set aside for remuneration is 5 per cent. on the capital of £3,150 .. .. =	£157	10	0
(*c*)	The amount left to provide for sinking fund instalments and income tax thereon	£342	10	0
(*d*)	Income tax thereon at 9s. in the £ ..	£154	7	0
(*e*)	Hence the net instalment of sinking fund set aside each year is	£188	3	0

S. So far I can follow you. Your point is that as the income of £500 p.a. is not affected by the expenditure, the amortisation of the original capital sum really recoups the expenditure.

D.V. Yes, broadly. The £188 3s. 0d, multiplied by 16.682, which is the amount to which £1 accumulates in 15 years at 1½ per cent, gives £3,140, near enough to the £3,150.

S. I see. So the capital invested for the 15 years is really made up of :—

	£	
Cost of works	2,000	
Provision for reinstatement back to house	160	
Loss of rent	200	
Development charge ..	790	(which you call £800)
	£3,150	

D.V. Yes.

S. Well, you've convinced me that a separate provision for the amortisation of the £2,000 would be a double deduction.

You haven't convinced me, however, that there should be no allowance for risk and profit. Your grounds for making no such allowance are that my clients are owner occupiers and own the property next door. I think it's very invidious that the development charge in such a case should be greater than if some other person had obtained the planning permission.

D.V. I'm not sure how far it's within my instructions, but morally I'm bound to admit there's something in what you say in that respect. To meet your argument I'm prepared to allow, say, £250 as developer's profit.

S. I don't think that goes quite far enough. There is a substantial expenditure involved here in operations alone—£2,000, plus the £200 loss of rent and locking up £160 for 15 years to convert back to the original use. That totals £2,360 and I think 15 per cent. is warranted. I call that £360, which deducted from your proposed £790 gives £430.

D.V. I can't go quite as far as that but I'll report a development charge of £450—that's a nice round figure.

Progress of Development Plans

(*Continued from p. 655, ante*)

The following is a continuation of the list of plans submitted to date (November 20, 1951). Any objections should be sent to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before the closing date indicated.

3. West Hartlepool County Borough Council.
Approved (with modifications): November 9, 1951.
(London Gazette, November 13, 1951.[1])

14. Gloucester County Borough Council.
Local inquiry: November 21, 1951.

16. Stoke-on-Trent County Borough Council.
Local inquiry: January 22, 1952.

19. Newcastle-upon-Tyne County Borough Council.
Local inquiry: December 18, 1951.

24. Leicester County Council.
Local inquiry: December 5, 1951.

28. West Riding of Yorkshire County Council.
Local inquiry: January 29, 1952.

38. Burnley County Borough Council.
Local inquiry: December 12, 1951.

41. Ipswich County Borough Council.
Submitted to Minister: October 30, 1951.
(London Gazette, November 2, 1951.)
Closing date for objections: December 20, 1951.

Scotland

(*Continued from p. 537, ante*)

The following is a continuation of the list of Scottish development plans. Objections should be addressed to the Secretary of State for Scotland and sent to the Department of Health for Scotland, St. Andrew's House, Edinburgh 1.

s. 4. Fife County Council (Levenmouth Part Plan).
Submitted to Secretary of State: October 26, 1951.
(Edinburgh Gazette, October 30, 1951.)
Closing date for objections: December 20, 1951.

s. 5. Motherwell and Wishaw Town Council.
Submitted to Secretary of State: November 8, 1951.

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[1] Any application to the High Court challenging the validity of the plan or any provision therein, must be made within six weeks from this date—see s. 11 (2) of the Act of 1947.

Statutory Instruments

Minister of Local Government and Planning (Change of Style and Title) Order, 1951

(SI 1951, No. 1900)

Made - - - -	1*st November*, 1951
Laid before Parliament	2*nd November*, 1951
Coming into Operation	3*rd November*, 1951

His Majesty, in pursuance of section two of the Ministers of the Crown (Transfer of Functions) Act, 1946,[1] is pleased, by and with the advice of His Privy Council to order, and it is hereby ordered as follows:—

1.—(1) The style and title of the Minister of Local Government and Planning (conferred by the Transfer of Functions (Minister of Health and Minister of Local Government and Planning) (No. 1) Order, 1951,[2] shall be changed to "the Minister of Housing and Local Government".

(2) The said new style and title shall be substituted for the former in all enactments relating to the said Minister, and in all instruments (other than this Order), contracts and legal proceedings made or commenced before the coming into operation of this Order which refer to the said Minister:

Provided that nothing in this paragraph shall be construed as affecting the title of any Act or instrument.

2.—(1) This Order may be cited as the Minister of Local Government and Planning (Change of Style and Title) Order, 1951.

(2) This Order shall come into operation on the third day of November, nineteen hundred and fifty-one.

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[1] 9 & 10 Geo. 6, c. 31.

[2] SI 1951, No. 142, *ante*, p. 150.

Ministerial Information and Circulars

Loans Sanctioned

In a notice dated October 22, 1951, the loans sanctioned by the Minister of Local Government and Planning to local authorities in England and Wales for planning purposes during the quarter ended September 30, 1951, are shown as amounting to £1,956,418. Cancellation during the same period of consents issued in the previous quarter of the current financial year are shown as £4,590. Cancellations of consents issued in previous financial years are shown as nil.

Central Land Board Practice

Interest on Development Charges

It has been announced that the statement by the Minister of Local Government and Planning (*ante*, p. 543) that interest of 4½ per cent. is charged by the Central Land Board upon outstanding instalments of development charges which are secured only as a second mortgage, was not intended fully to explain the policy of the Board.

Whilst in many cases the outstanding instalments are secured by second mortgage, and the rate of 4½ per cent. is applicable as a minimum, there are other cases where the instalments are secured by a first mortgage. In the latter cases, the Board may be prepared to accept a lower rate of interest, of not less than 4 per cent.

Development by Local Authorities

C.L.B. CIRCULAR, NO. 3/51 (REF. L.B. 1/4/5)
OCTOBER 31, 1951

To All Local Authorities:

The Board's Circular 9/49,[1] dated July 9, 1949, set out a formula for assessing development charge on development by local authorities. The formula provided for the classification of local authority development in four general classes, which were set out in para. 4 of Paper 1 of the Appendix which accompanied the Circular.

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[1] [1949] J. P. L. 531.

The Board have compiled, in consultation with representatives of the Local Authority Associations and the London County Council, a list of various forms of local authority development classified for purposes of the formula. The list is attached as an Appendix to this Circular and includes a definition of the term " Public Open Space " which has been agreed (subject to review) with representatives of those associations.

APPENDIX

CLASSIFICATION OF LOCAL AUTHORITY DEVELOPMENT WITH REFERENCE TO THE FOUR CATEGORIES OF THE BOARD'S FORMULA

Key

O = Outside the formula
A = Housing or Educational Purposes (housing value)
B = Public Open Spaces (quarter housing value)
C = Municipal Offices and Depots (comparable commercial value)
D = Public Buildings and Works (prevailing use value)

Development	Category
Agricultural	
Allotments	O
Smallholdings	O
Experimental Farm	O[2]
Education Farm	O[2]
Plant and Tree Nurseries	O[2]
Ambulance Service	
Ambulance Stations	D
Telephone Rooms, etc.	D
Stores	D
Workshops	D
Staff Quarters (other than dwelling quarters)	D
Staff Dwelling Quarters	A
Children Act, etc., services	
Approved Schools	A
Probation Hostels	
Remand Homes	
Residential Nurseries	
Residential Establishments for Children and Young Persons (schools, homes and hostels)	
Temporary Reception Homes	

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[2] Except any educational buildings which would be classified A.

Development		Category
Education Service		
Nursery Schools	including attached playing fields of normal size.	A
Primary Schools		
Schools for Secondary Education:		
Day		
Boarding		
Special Schools:		
Day		
Residential		
Schools for Further Education:		
Technical Institutes		
Evening Institutes		
Day Colleges		
Training of Teachers:		
Training Colleges		
Hostels		
Medical Inspection and Treatment Centres		A
Provision of Meals:		
School Kitchens including—		
Garages		
Dining Rooms		
Facilities for Recreation, etc.:		
Community Centres without Playing Fields or with Playing Fields of normal size		A
Playing Fields in excess of normal size attached to Community Centres, Schools or Colleges		B
Detached Playing Fields		
Swimming Bath if within curtilage of School		A[3]
Youth Clubs and Youth Centres		A
Camps		A
Cadet Corps		A[4]
School Clubs and Societies		A[4]
Fire Service		
Canteens		D
Fire Stations		D
Staff Quarters (other than Dwelling Quarters, *e.g.*, rest and recreation rooms)		D
Staff Dwelling Quarters		A
Stores		D
Telephone Rooms, etc.		D
Workshops		D

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[3] Where outside the curtilage of the school—Category D.

[4] If within the school grounds.

Development	Category
Health Services	
Clinics and Treatment Centres	D
Day Nurseries for Healthy Children	A
Home Nursing Establishments	A
Laboratories	C
Recuperative Holiday Homes	C
Housing	
Block Dwellings	A
Cottage Estates	A
Development associated with above:	
Shops of all kinds	C
Factories	C
Estate Offices	C
Repair Depots	C
Banks	C
Other Offices	C
Common Lodging Houses	A
Hostels	A
House and Quarters for Staff, *e.g.*:	
Police	A
Firemen	
Caretakers	
Resident Engineers	
Nurses	
Park Keepers, unless Keeper's House is included in and appropriate to a Public Open Space	
Legal, etc., Buildings	
Coroners' Courts and Mortuaries	D
Children's Courts	
Magistrates' Courts	
Sessions Houses	
Miscellaneous Municipal Undertakings	
Abattoirs	C
Art Galleries	D
Aerodromes	C
Camping Grounds (hutted)	C[5]
Central Bakeries	C
Central Garages	
Central Repair Shops	
Central Laundries	
Central Stores	
Cemeteries and Cemetery Chapels	
Civic Restaurants	

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[5] But if on a public open space as for public open space.

Development	Category
Cold Stores	C
Concert Halls	C
Crematoria	C
Depots (other than highway depots)	C
Disinfecting and Disinfesting Stations	D
Factory Estates	C
Hotels	C
Libraries	D
Markets	C
Municipal Banks	C
Museums	D
Car Parks—Public use	C
Quarries	C
Racecourses	C
Refreshment Kiosks	C
Shops and Shopping Centres	C
Slipper Baths and Washhouses	D
Swimming Baths	D
Tipping (controlled) on sites	C
Theatres	C
Offices	
Central Administrative Offices	C
Central Education Offices	
Divisional, Area and District Offices	
Divisional Education Offices	
District Surveyors' Offices	
District Architects' Offices	
District Engineers' Offices	
Area Offices—Civic Restaurants	
Area Offices—Social Welfare	
Area Offices—Children's Care	
Area Offices—Estate Management	
Area Offices—Mental Health	
District Offices—Rating	
Divisional Offices—Health Service	
Town Halls	
Town Halls with Public Assembly Rooms	C
Weights and Measures Testing Stations	C
Probation Offices	C
Printing Offices	C
Juvenile Employment Bureaux	C
Police	
Police Stations	D
Garages	D
Wireless Stations	D
Canteens	D
Police Cottages	A
Staff quarters (other than dwelling quarters)	D
Staff quarters (dwelling quarters)	A

Development	Category
Public Open Space	B[6]
For this purpose "Public Open Space" means— (*a*) any park, heath, town or village green, common, recreation ground, pleasure ground, garden, walk, ornamental enclosure, or (*b*) any disused burial ground held by or under the control or management of a local authority, or (*c*) any land acquired by a local authority under the Green Belt (London and Home Counties) Act, 1938, used for the purpose of providing facilities for public enjoyment, recreation or other healthful activity, and includes any buildings erected on any such land which are designed to promote the enjoyment by the public of that land as an open space.	
Buildings such as theatres (other than those forming part of an open air theatre), restaurants (other than those primarily for the convenience of persons using the open space), amusement halls, dance and concert halls are not within this category and development charge will be payable under other heads of this agreement or, if not falling within any other head of this agreement, under the ordinary provisions of the Act in respect of any development of an open space by the erection of buildings not conducive to the enjoyment of the land as an open space.	
Refuse Disposal	
Refuse Destructors	D
New Sites for Refuse Tipping	C
Vehicle Depots	C
Sewage Disposal	
Sewage Works	D
Welfare Services	
Homes for Mothers and Babies	A
Hostels for the Blind	A
Emergency Hostels	A
Large Homes	A
Old People's Clubs	A
Reception Centres	A
Rest Centres	A
Small Homes for the Aged	A

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[6] The payment of development charge on the basis of category (B) in respect of development of land as a public open space will enable the local authority to build on the land at any time subsequently any buildings appropriate to the public open spaces.

Notes of Cases

High Court: Chancery Division

Unfinished Buildings—S. 78 of the Act

Marks and Spencer, Ltd. v. London County Council and Central Land Board [1] (November 14, 1951). The plaintiffs claimed that they were entitled to complete works for the erection of an office building in accordance with planning permission deemed, by virtue of s. 78 of the Town and Country Planning Act, 1947, to have been granted under Part III of the Act and without payment of development charge.

The plaintiffs in 1937 had made an agreement with the landlords under which they would become entitled upon completion of an office building on the site in question to a lease for ninety years from 1936. They obtained in 1938 from the London County Council interim development permission subject to the condition that the work should be commenced within six months and completed within eighteen months from August 1, 1938, failing which the permission was to become void.

The plaintiffs made a demolition contract with contractors under which the existing buildings had, by July, 1939, been demolished, the site cleared and other preparations for building made. No further work had been done on behalf of the plaintiffs by July 1, 1948. The plaintiffs now wished to put up the office building. The London County Council said that fresh planning permission was necessary and refused to grant the same on the ground that the site was no longer appropriate for office building use. The Central Land Board refused to make a nil assessment of development charge on the ground that the case did not fall within s. 78.

The plaintiffs contended (a) that the works of demolition and preparation of a site were " works for the erection . . . of a building " within s. 78 (1), and (b) that the works could be completed in accordance with the interim development permission because the condition as to time was *ultra vires* the London County Council or, alternatively, was void for not stating the reasons for which it was imposed in accordance with s. 10 (3) of the Town and Country Planning Act, 1932, and art. 10 of the General Interim Development Order, 1933.[2]

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[1] For the plaintiffs: *Michael Rowe*, K.C., *J. Ramsay Willis*, and *V. M. C. Pennington*, instructed by J. C. Parry; for the London County Council: *Charles Russell*, K.C., and *H. E. Francis*, instructed by J. G. Barr; for the Central Land Board: *Denys B. Buckley*, instructed by the Treasury Solicitor.

Harman, J., said that it had been agreed before him that " works ", by reason of the use of the plural must connote physical operations on the site. It was clear that the erection of a building need not have begun because otherwise no meaning could be given to " works for ". He held (1) on the facts it was not possible to say that on July 1, 1948, the site contained works for the erection of a new building; (2) a condition as to time was intimately bound up with planning and was not *ultra vires*; (3) the council were bound to state their reasons only where permission was refused.

Semble, if there had been here a building contract which involved the demolition of the old buildings and the erection of the new it might well have been possible to say that though the performance of the contract had proceeded no further than demolition of the old buildings that was nevertheless works for the erection of the new.

J. B.

MAGISTRATES COURTS

Enforcement Notice Where 1946 *Act Determination*

Bruskin v. London County Council[3] (September 3 and 17, and November 14, 1951). This was an appeal to the North London Magistrates' Court against an enforcement notice which was headed " Sections 23 and 75 " of the Town and Country

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[2] The Act of 1932, s. 10 (3) provided: " Where an application for permission to develop land is made to the specified authority in manner provided by the [General Interim Development] Order, the authority may, subject to the terms of the Order, grant the application unconditionally or subject to such conditions as they think proper to impose or may refuse the application, and they shall be deemed to have granted the application unconditionally unless within two months from the receipt thereof, or within such longer period as the applicant may agree in writing to allow, they give notice to him that they have decided to the contrary, stating their reasons for doing so ".

The 1933 Order (S. R. & O., 1933, No. 236), art. 10, provided: " The grant or refusal of permission by the interim development authority for development to proceed shall be in writing and, where the authority decide to grant permission subject to conditions, or to refuse permission, the reasons for their decision shall be stated in writing ".

[3] For the appellant: *S. W. Magnus*, instructed by Cecil Altman; for the County Council: *William Scrivens*, instructed by J. G. Barr.

Planning Act, 1947, and required the appellant to discontinue the use of a house at Stoke Newington for the business of a furrier. The use had been commenced in 1940, and in August, 1949, the county council had determined under s. 2 of the Building Restrictions (War-Time Contraventions) Act, 1946, that the use did not comply with planning control. They further determined, however, that the use " shall be deemed to comply with planning control ", and added that " they hereby grant permission under Part III of the Town and Country Planning Act, 1947, subject to " certain conditions limiting the permission to a period of one year, and requiring the use of the premises to be discontinued after that period. No formal application for planning permission under the Act of 1947 was made.

After the expiration of the period of one year specified in the determination, the use as a furrier's still continued, and the county council served the enforcement notice requiring it to be discontinued.

The Court (Seymour Collins, Esq.) held that the effect of the determination of August, 1949, by the county council was to grant permission for the continuance of the use subject to the condition that it should be discontinued after one year. Under s. 23 (1) of the Act of 1947 as amended by the Town and Country Planning (Amendment) Act, 1951, where there has been non-compliance with a condition subject to which a planning permission required under the Act of 1947 has been granted, an enforcement notice may, since March 21, 1951, when the Act of 1951 came into force, be served at any time within four years after the date of the alleged failure to comply with the condition.

The Court decided that the enforcement notice in this case was accordingly valid under s. 23 of the Act of 1947, and not served out of time. The reference in the notice to s. 75 was held to be mere surplusage, and the appeal was dismissed with an award of ten guineas costs against the appellant.

In view of the possibility of an appeal against this decision, the Court further held that if it had to be determined whether the case came within para. (*a*) or para. (*b*) of s. 75 (2) of the Act of 1947, in view of the conditional determination under the Act of 1946, para. (*a*) and not para. (*b*) was applicable, and s. 75 did not apply.

H. J. J. B.

*Lands Tribunal Decisions**

CLAIMS FOR LOSS OF DEVELOPMENT VALUE

Trustees of Mrs. A. M. Birts, decd. v. Central Land Board (October 24, 1951). This was an appeal against a determination by the Central Land Board that there was no development value in the freehold interest in fourteen houses and two shops, contained in three terraces, and a pair of semi-detached houses, at Bromley, Kent. The houses were let on ninety-nine year leases having fifty-six years still to run and yielding an aggregate ground rent of £80 p.a.

The appellants claimed development value of £486 (unrestricted value, £2,298; restricted value £1,812).

The Tribunal (Sir WM. FITZGERALD, K.C., and CECIL H. BAILEY, Esq., B.SC., M.I.C.E., F.R.I.C.S.) did not accept either of the two reasons on which the appellants' valuer had based his calculation of development value.

In calculating the capital value of the fifty-six years' income from the ground rent he had adopted a discount rate of 4½ per cent. in calculating restricted value but 4 per cent. for unrestricted value on the ground that reduced security for the ground rents must be allowed for in the calculation of restricted value. The Tribunal held that this was precluded by s. 62 (2) of the Act which requires that it shall be assumed that the lessee will at all times be able to pay the rent and perform his other obligations.

Secondly, in assessing the restricted value, the appellants' valuer had assumed that planning permission would not be granted for converting the dwelling-houses into shops on the termination of the lease, and had accordingly taken a lower value for the reversionary interest for this reason. The Tribunal, whilst emphasising that their decision on this question was not a decision on the principle involved, held that on the particular facts of this case this factor would have an insignificant effect on a purchaser of the reversionary interest.

The Central Land Board's determination that there was no development value was accordingly confirmed by the Tribunal, costs being awarded against the claimants.

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* Full reports of these cases will appear in *Planning and Compensation Reports*.

SCOTTISH CASES

Two appeals under the corresponding provisions of the Town and Country Planning (Scotland) Act, 1947, have also been decided. Under s. 57 of the Act and the Claims for Depreciation of Land Values (Scotland) Regulations, 1948 and 1949,[1] such appeals are determined by an arbiter appointed in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919.

Trustee of Robert Mitchell, decd. v. Central Land Board (August 7, 1951). This was a claim in respect of 0.17 acre of land, the garden of a small cottage. The claimants originally claimed that the development value was £290 (£300 – £10), but modified this at the hearing to £55 (£65 – £10). The District Valuer assessed the development value at nil (£4 – £4).

The Arbiter (A. LICKLEY PROCTOR, Esq., F.R.I.C.S.) held that as the property was in a small village where there had been little development over a considerable period and where there was ample other land available for building, the development value was nil. Costs of three guineas payable to the Central Land Board and the fee and expenses of the Arbiter, were awarded against the claimant.

Evans v. Central Land Board (August 22, 1951). This was a claim in respect of a narrow strip of woodland, 470 yards long, 7.698 acres in area, with frontage to a public road of 83 yards. Since 1945 plots of land had been let out as sites for the erection of huts as living quarters. The claimant claimed that the development value was £7,462 (£8,000 – £538), the unrestricted value being based on the possibility of developing the land by erecting forty bungalows. The Central Land Board assessed the development value at £300 (£838 – £538).

The Arbiter (ROBERT JOHNSTON, Esq.) considered that the land was unsuitable as a site for permanent houses— the nature of the land would result in the road and sewer costs being excessive. There was a large area of land more suitable for building available in the vicinity, and the most lucrative development of the land was as a site for huts. On this basis the Arbiter confirmed the Central Land Board's determination, and awarded costs against the claimant.

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[1] SI 1948, No. 907; SI 1949, No. 1193.

COMPENSATION FOR COMPULSORY ACQUISITION

Cottrell-Dormer v. Bristol Corporation[1] (October 15, 1951). This was a claim for compensation for the compulsory acquisition of the interest of the tenant for life of land and premises in Bristol.

The claimant had originally claimed £25,735 plus £1,000 for injurious affection, but during the hearing the parties agreed that on the basis that the land was ripe for development, and excluding the effect of s. 55 (3) of the Act of 1947, the value was £16,000, and on the basis of s. 55 (3) the compensation should be £980.

Notice to treat was served on January 29, 1948. An application for a dead ripe certificate under s. 80 of the Act of 1947 was held by the Tribunal to have been made by the claimant on July 8, 1948, the date of a letter to the Ministry, an earlier letter addressed to the Central Land Board which had been forwarded by them to the Ministry not being accepted by the Tribunal as a proper application. The s. 80 certificate was in due course granted by the Ministry.

The Tribunal (Sir William Fitzgerald, k.c., and J. P. C. Done, Esq., f.r.i.c.s.) did not accept a contention by counsel for the claimant that s. 55 (3) of the Act was ousted by a contract between the parties founded on a letter dated June 16, 1948, from the City Estates Surveyor and Valuer to the claimant's agents, which had said that discussion of unrestricted value was not then possible but that negotiations could be entered into if a s. 80 certificate were granted. They held that having regard to the wording of s. 55 (3) of the Act of 1947, and the fact that at the date of the notice to treat no s. 80 certificate had been, or could have been, granted, it would be *ultra vires* for the Corporation to pay compensation on the basis that the land was ripe for development. For the same reason they also rejected a further contention that the acquiring authority were estopped by the letter of June 16 and the subsequent conduct of their officials from paying compensation based on the value of the land for development. The City Estates Surveyor and Valuer had written to the claimant's agents on July 5, 1948, stating that compensation would only be paid under s. 55 (3), and in the light of this letter, dated three days before the application for the s. 80 certificate, the Corporation could not be barred by estoppel.

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[1] The decision of the Lands Tribunal in this case confirms the view put forward in this *Journal* as long ago as June, 1948, in an article by R. D. Stewart-Brown (see [1948] J. P. L. 169–171). It was there pointed out that " there is no provision in s. 55 of the Act . . . similar to s. 51 (4), and under s. 55 land ripe for development cannot be treated in any different manner from other land ".

Compensation accordingly fell to be assessed under s. 55 (3) of the Act of 1947, at the agreed amount of £980, notwithstanding that the effect of the s. 80 certificate would be to preclude any payment from the £300 million fund under Part VI of the Act, for loss of development value in respect of the development specified in the certificate. Costs were awarded to the acquiring authority.

King and others v. Westminster Corporation (No. 1) (November 5, 1951). This was a claim for compensation for the compulsory purchase of the leasehold interest in a terrace house in Effingham Street, London, S.W.1, the term of the lease expiring on March 25, 1968, and the ground rent being £8 p.a. The house was let in floors, the aggregate rental amounting to £149 10s.

The claimants claimed £1,193, the amount of a value payment made by the War Damage Commission in respect of a similar house. The acquiring authority submitted a valuation of £350, based on the income of £149 10s. with deductions in respect of the ground rent, outgoings, and accrued dilapidations.

The Tribunal (CECIL H. BAILEY, ESQ., B.SC., M.I.C.E., F.R.I.C.S.) remarked that the statutory provisions which define the assumptions on which a value payment is to be calculated are quite different from those defining the assumptions for calculating compensation for compulsory purchase, and accepting the acquiring authority's valuation, awarded compensation of £350.

King and others v. Westminster Corporation (No. 2) (November 5, 1951). This was a further claim between the same parties in respect of another house in the same terrace, the facts being similar except that the aggregate rental in this case amounted to £185 18s., and the figures for outgoings and dilapidations were slightly different.

The Tribunal (CECIL H. BAILEY, ESQ., B.SC., M.I.C.E., F.R.I.C.S.) accepted the acquiring authority's valuation in this case also, and awarded compensation of £470.

Notes of Planning Decisions[*]

Erection of Private Garages—Adequacy of Access

The following is an extract from the letter of the Minister of Local Government and Planning dated September 28, 1951, allowing an appeal against the refusal of the Hendon Borough Council to permit the erection of two private garages on land situated at the rear of Nos. 25 and 26 Devonshire Crescent, Hendon, N.W.7. The reason given for refusal was the inadequacy of the access to the proposed garages.

" Access to the appeal site is given by a lane which, although too narrow to allow two vehicles to pass, is straight and opens on to Devonshire Crescent, a lightly trafficked residential street less than fifty yards away. In the circumstances the Minister takes the view that the proposed development represents a reasonable use of the appeal site and that the access although not good is adequate."

[By courtesy of the Town Clerk, Borough of Hendon.]

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Condition Regulating Height of Signboard

The following is an extract from the letter of the Minister of Local Government and Planning dated August 21, 1951, allowing an appeal against the condition imposed on the permission granted by the Cambridgeshire County Council for the display of a sign on land situate beside the entrance to Aero Research Limited, Ickleton Road, Duxford.

" The Minister observes that the condition imposed by the local planning authority restricted the height of the top of the signboard, which would be erected on the north side of the factory entrance, to not more than three feet above the ground, but that consent had originally been granted for the display of the sign at a height eight feet six inches on the south side of the factory entrance. He notes that the surrounding locality is in the main rural, but that industrial development has taken place in the immediate vicinity of the site of the proposed sign, and that it is intended to extend the development by building on the land north and east of the site.

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[*] The Managing Editor desires to express his thanks to those who have been kind enough to send to this Journal particulars of planning decisions, and hopes that he will continue to receive particulars of planning decisions which involve points of general interest.

Having regard to all factors in this case, the Minister sees no reason to support the authority's view that the height of the sign should be reduced to three feet. The Minister accordingly allows the appeal, and discharges the condition imposed by the authority."

[By courtesy of the County Planning Officer, Cambridgeshire County Council.]

Greyhound Race Track Near Small Village

The following is an extract from the letter of the Minister of Local Government and Planning dated July 19, 1951, dismissing an appeal against the refusal of the Cambridgeshire County Council to permit the use of land near Milton for the purposes of a greyhound race track.

"The appeal site is a level 6 acres of grazing land on the eastern side of a loop road connecting two points on the London-King's Lynn Trunk Road. A further 3 acres of an adjoining field would be used as a car park. The site is at the southern end of the village of Landbeach, and has access to the loop road over a 600 ft. long driftway with a maximum width of 18 ft.

The Minister has carefully considered the facts of the case and the representations made to him, and has consulted the Minister of Agriculture, by whom he is informed that the site is good agricultural land, which it is desirable to keep in agricultural use. The establishment of a dog racing track on this site would be likely to prejudice the character and quiet of this small village; it would also involve an appreciable increase of traffic at an awkward junction and on a quiet by-road without footpaths, and while there is evidence of some demand for a race track in the area, there is no compelling reason why it should be in Landbeach rather than on a site more accessible to the places from which it would draw support. In these circumstances the Minister considers that the council were right in refusing permission for a track on this site."

[By courtesy of the County Planning Officer, County of Cambridge.]

Practical Points

All questions for consideration should be addressed to " The Managing Editor, The Journal of Planning Law, 3 Chancery Lane, London, W.C.2." The questions of subscribers only are answerable in the Journal. All questions should be submitted in duplicate. The Publishers cannot accept any responsibility for the correctness of replies.

341. *Claim for loss of development value—site of war-destroyed building.*

A form S.1 was submitted for the site of a pair of semi-detached small dwellings totally destroyed by enemy action in respect of which value payments have been made. Our client, a builder, purchased the sites in 1948 with the idea of rebuilding eventually.

The District Valuer suggests a nil development value as rebuilding would be covered by Part I of Sched. III, but we are not certain that in the event of rebuilding he will be tied down to pre-war rents, as both houses were controlled. Our impression is that he can charge what rent he can get in the first instance, and that would become the " standard rent ". Are we correct? [G. J. & S.]

ANSWER

The questioner's impression is correct. See *Ellis & Sons' Amalgamated Properties, Ltd.* v. *Sisman,* [1948] 1 K. B. 653, referred to in *East End Dwellings Co., Ltd.* v. *Finsbury Borough Council* (1951), 2 P. & C. R. 135. [W. A. L.]

342. *Development charge—rebuilding of temporary buildings.*

Semi-portable bungalows of temporary construction, made of timber, corrugated iron, asbestos, etc., were erected prior to the passing of the Act of 1947 without planning permission. It is presumed that, as the Act provides for the " rebuilding as often as is necessary ", no development charge would be attracted in the case of rebuilding into a permanent structure incorporating the 7,500 cubic feet tolerance.

What, however, is the position with regard to a similar building which was erected under short term permission for say five years, granted before the appointed day or even before 1947? Would subsequent rebuilding in permanent materials, plus the tolerance, attract a development charge? [W. G. G.]

ANSWER

There appears to be nothing to exclude these cases from the benefits of para. 1 of the Third Schedule if permission to rebuild is granted. [W. A. L.]

343. *Statutory undertakers—purchase of land from.*

Clients of ours engaged in industrial activities are willing to purchase from a "statutory undertaker" land situate in an area zoned for industrial use. They are informed that the land is available for purchase and they have had a price suggested to them on the basis that the statutory undertaker will sell free of development charge. On inquiry they are informed that in fact no development charge is payable, and we are requested to advise whether they can safely assume that no development charge can be recovered from them by the Central Land Board if they proceed with the purchase on the terms offered and use the land for the purposes of their industry. It would appear the land was operational land within the provisions of s. 84 of the 1947 Act. Can you please direct us to authorities to advise:—

(1) whether or not our clients can rely on the alleged proposition that they will have no development charge to pay; and

(2) whether the statutory undertakers are in any way restricted as to the price they can recover? At the price suggested it is clear the statutory undertakers will make a substantial profit over the original price and cost of development. [H. & S.]

ANSWER

1. Your clients can only rely on s. 84 having assured themselves that this is operational land, if necessary by a determination of the appropriate Minister under s. 119 (2). No development charge will be payable if the use is that prevailing in the case of contiguous or adjacent land. For this your clients can rely on their general knowledge of the zoning or on a determination of the Central Land Board under s. 110 (2) which is probably the safer.

2. No, but like every other seller, he has to fear that representations will be made to the Central Land Board for them to acquire compulsorily on the grounds that he is asking too high a price. [R. P. C.]

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